

THE

INDIAN LIMITATION ACT

(IX OF 1908)

WITH

EXHAUSTIVE, ANALYTICAL AND CRITICAL COMMENTARIES

BY

V. V. CHITALEY, B. A., LL. B.,

Senior Advocate, Federal Court & Editor, All India Reporter

AND

K. N. ANNAJI RAO, B. A., B. L.,

Advocate, High Court, Madras

Authors of the Commentaries on "The Code of Civil Procedure" and "The Code of Criminal Procedure."

VOLUME III

THE FIRST SCHEDULE
ARTICLES 141 TO 183
APPENDIX AND
GENERAL INDEX

ALL INDIA REPORTER LTD., NAGPUR

1939

(All Rights Reserved)

TRINTED BY D. G. BANADE
AT THE ALL INDIA REPORTER PRESS
NAGIUR.

CONTENTS

Abbreviations	***		***	1951—1952
COMMENTARY OF Articles 141	to 183		•••	1953—2630
Schedule II (Repealed)	***		•••	2631
Schedule III (Repealed)	:	-	•	2632
Appendix: Punjab Limitation (Custom) Act, 1 of $1920^{'}$			•••	2633-2636
Articles 141 to 183 with synopses in parallel columns			•••	2637—2652
Conorn) Index				0653 9064

~ce/\$26730

IBESTED BY D. G. BANADE
AT THE ALL INDIA REPORTER PRESS
NAGIUE.

CONTENTS

Abbreviations	***	***	1951—1952
COMMENTARY on Articles 141 to	183		1953—2630
Schedule II (Repealed)	· ·	•••	2631
Schedule III (Repealed)	*	•••	2632
Appendix: Punjab Limitation (Custom) Act, 1 of 1920			2633-2636
Articles 141 to 183 with synopses	s in parallel columns	•••	2637—2652
General Index	***		2653-3064

PRINTED BY D. G. RANADE

AT THE ALL INDIA REPORTER PRESS

NAGPUR.

ABBREVIATIONS A I R 1921 All, Born, etc. ... All India Provider, Allahabal, Bombay,

A 1 R. 1921 All., Bem , etc.	" YII 124'Y Indiated, Throughly Demy
	etc., sections of the respective years
All.	Allahabad (I. L. R.)
Agra	Arra High Court Reports.
All L Jeur	Allahata l Low Journal.
All W N	Allahabad Workly Scien.
Beng L. R.	Bengal Law Reports.
Bom.	Rembay (I. L. IL).
Bem. H. C. R.	79 6 751 1 M 4 73 m 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4
Bem. L. R	Bombay Law Perceter.
Bem P. J.	Bombay Printed Julgments.
Bourke.	Bourke's Reports.
Bur. L. Jour.	Rurma Law Journal.
Bur. L. R.	Burma Law Reports.
Bur. L. Tim.	Borma Law Times.
Cal.	Calcutta (I. L. IL).
Cal L. Jour	Calcutta Low Journal.
Cal. L. R	Calcutta Law Reports.
Cal. W. N.	Calcutta Weekly Notes.
C. P. L. R.	Central Provinces Law Reports.
Cor.	Coryton's Reports.
Cr. C.	Crimical Cases.
Cr. L. J.	Criminal Law Journal.
E. R.	English Reports.
Hay.	Hay's Reports.
Hyde.	Hyde's Reports.
Ind. App.	Law Reports, Indian Appeals.
Ind. Cas.	Indian Cases.
Ind. Jur. (N.S.)	Indian Juriet (New Series).
Ind. Jur. (o.s.)	Indian Jurist (Old Series).
Ind. Rul.	Indian Rulings.
Knapp.	Knapp's Reports.
Lah.	Lahore (L. L. R.).
Lab. L. Jour.	Lahore Law Journal.
L. R. A.	Law Reporter, Allahabad.
Low. Bur. Rul.	Lower Burma Rulings.
Luck.	Lucknow (I, L. R.).
L. C.	Lucknow Cases.
Mad.	Madras (I. L. R.).
Mad. H. C. R.	Madras High Court Reports.
Mad. Jur.	Madras Jurist.
Mad. L. Jour.	Madras Law Journal.
Mad. L. Tim.	Madras Law Times.
Mad. L. W.	Madray Law Weekly.
Mad. W. N.	Madras Weekly Notes.
Marsh.	Marshall's Reports.
Moo. Ind. App.	Moore's Indian Appeals.
	••

Moo. P. C. C. Nag. L. Jour. Nag. L. R.

Nag. 11. R. N.-W. P. H. O. R.

Oudh Cas. Oudh L. Jour.

Oudh W. N. Pat.

Pat. H. C. C.

Pat. L. Jour. Pat. L. R.

Pat. L. E. Pat. L. Tim.

Pat. L. W. Pun. L. R.

Pun. Re. Pun. W. R.

R. & J.'e.

Rang. R. R.

R S. C. Sar. Shome L. R.

Sind L. R. Snther.

Suth. W. R. Times L. R. U. P. L. R.

U. P. B. R. U. P. B. R. Upp. Bur. Rul.

Weir. W. R. (Eng.)

C. A. CI.

Cr. F. B. F. N.

F.-N. Jour. N.

C. P. P. C.

Pt. R. S. S. B. ... Moore's Privy Council Cases.
... Nagnur Law Journal.

Nagpur Law Reports.

... North-West Provinces High Court Reports.

... Oudh Cases.
... Oudh Law Journal.

... Ondh Weekly Notes.
... Pstna (I. L. R.).

. Pstna High Court Cases.

Patna Law Journal.
Patna Law Reporter.

... Patna Law Times. ... Patna Law Weekly.

... Punjah Law Reporter. ... Punjah Record.

... Punjah Weekly Reporter.
... Rafique and Jackson's Ondh Privy

Council Decisions. ... Rengoon (I. L. R.).

Revised Reports.

Rules of the Supreme Court of England.

Saraswati'e Privy Council Judgments.

... Saraswati'e Privy Cour ... Shome's Law Reports. ... Sind Law Reporter.

Sutherland's Privy Council Judgments.

... Sutherland's Weekly Reporter.
... Times Law Reports.

... United Provinces Law Reports.
... United Provinces Board of Revenue.

... Upper Burma Rulings. ... Weir's Criminal Rulings.

... Weekly Reporter (England).

... Court nf Appeal.

... Clanse. ... Criminal. ... Full Bench.

... Full Bench ... Foot-Note. ... Journal.

... Nnte. ... Order. ... Page.

•••

... Privy Conneil...

... Rnle.

... Section.
... Special Bench.

THE INDIAN LIMITATION ACT

ACT IX of 1908

Volume III.

THE FIRST SCHEDULE

FIRST DIVISION: SUITS (continued)

Description of suit. Period of limitation. Time from which period begins to run.

PART VIII. - Twelve Years (continued).

141.* Like suit by Twelvoyears. When the a Hindu or Muhannnadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.

* Act of 1877
Same as above.

Act of 1871

142.—Lake suit by a Hindu entitled to the possession of immoveable property on the death of a Hindu widow.

Act of 1859

No corresponding provision.

Article 141

Article 141

Synopsis

- 1. Legislative changes.
- 2. Scope of the Article.
- 3. "Like suit."
- 4. "By a Hindu or Muhammadan."
- "Entitled" means entitled independently of the right of the female.
- Plaintiff must be entitled to the possession on the death of the female.
- 7. "On the death of a Hindu or Muhammadan female."
 - Suit by a transferee from a Hindu or Muhammadan entitled etc.
 - Death, if includes civil death Effect of surrender by female or re-marriage of wildow.
 - 10, "Hindu or Muhammadan female,"
- ii. "Immoveable property."
- 12. Suit contemplated is one against a person in possession.
 - 13. Adverse possession against female Effect of.
 - 14. Adverse possession against last male owner.
 - 15. Alienation or arrangement entered into by female. 15a. Limited owner setting up full title.
- 16. Suit involving declaration as to adoption by Hindu female.
- 17. Suit for possession on ground of mistake.
- Suit for redemption of mortgage made by last male owner where mortgages has, during widow's lifetime, transferred it to third party.
- 19. Section 6 and thie Article.
- 20. Onus of proof.
- 21. Starting point.
- 22. Local and special law.

Other Topics

Time runs against all reversioners and not merely against nearest reversioner ...

See Note 21, Pt. 3

See Note 21, Pt. 3

1. Legislative changes.

- 1 There was no Article corresponding to this in the Act of 1859. A suit for possession had, in all cases, to be filed within twelve years of the date when the cause of action arose.
- 2 Articlo 142 of the Act of 1871 provided that a suit for possession of immovable property by a Hindu entitled to the possession of immovable property on the death of a Hindu widow should be brought within a period of twelve years from the time when the widow died.
- 3. Article 141 of the Act of 1877 colarged the provision in Article 142 of the Act of 1871 so as to cover a suit by a Muhammadan, and the words "Hindu widow" were substituted by the words "Hindu or Muhammadan female." As to the reason of the addition of the word "Muhammadan" see Note 5 to Article 125 ante where also the word "Muhammadan" was added.
- The Article has been retained in the same form in the present Act.

See the undermentioned cases where the history of the Article has been traced ¹

2. Scope of the Article. — This Article applies to a suit by a Hindu or a Muhammadan for possession of immovable property where such Hiedu or Muhammadan has become entitled to such possession on the death of a Hindu or a Muhammadan female. It is restricted to suits by a plaintiff whose title and right, as the heir of the last full owner, to sue for possession, accrues upon the death of a female helding a woman's qualified estate under the Hindu or Muhammadan law. in This a Hindu reversioner would become entitled to the possession of immovable property belonging to the last male owner only on the death of the Hindu female who has succeeded to the last male owner. It is only then that the succession opens out to

Article 141 - Note 1

6 Ind App 267: 117 Ind

801: 51 All 188 (F B),

(1850) 13 Mad 512 (514, 515), Sambasna v. Ragava.

1

(1915) A I R 1915 Mad 539 (540): 25 Ind Cas 692, Venkalaratnam v. Venkalaramah.

(1918) A I R 1918 Mad 756 (757) . 42 Ind Cas 228, Ramachandra Redds v. Audemma

(1929) A I R 1929 Mad 421 (423, 424, 425) : 119 Ind Cas 57, Ayyaswams Ayyar v. Mahadeta Ayyar.

(1916) A I R 1916 Oudh 50 (53, 54): 18 Oudh Cas 289: 33 Ind Cas 371, Ghisa Singh v. Gafraj Singh.

Note 2

1a (1924) A I R 1924 Pat 721 (728): 3 Pat 880: 83 Ind Cas 812, Keshav Prasad Singh v. Madho Prasad Singh. Article 141 Notes 1—2

him and he becomes entitled to get possession of the property. I His cause of action, in fact, is the death of the female.2 A suit by him for possession would lie only after the death of the female and not before.3 Such a suit would be governed by this Article.4 Similarly. certain classes of Muhammadans, such as the Khojas, Cutchi Memons and Halai Memons, follow the Hindu law with regard to the succession of females and the nature of the estate inherited by them,

- 1. (1938) A I R 1938 P O 254 (256) : 177 Ind Cas 1 (P C), Rajlakshmi Dassi v. Bholanath Sen.
- 2, (1925) A I R 1925 P C 127 (129) : 21 Nag L R 127 : 88 Ind Cas 343 (P C). Hariair Kisangir v. Anand Bharathi, (Reversioner's title accrues only on death of widow.)
 - (1878) 4 Cal 523 (526) : 3 Cal L R 391, Prosonna Nath Roy v. Afzolonnessa Begum.
 - (1901) 1901 All W N 62 (63), Shahadat Chaudhri v. Bhaguati Prasad.
 - (1936) A I R 1936 Pesh 119 (125), Ahmad Khan v. Mt. Hayat Bibi.
 - (1897) 19 All 357 (371); 1897 All W N 80, Hanuman Prasad Singh v. Bhagauti Prasadan.
 - (1830) 14 Bom 482 (489), Cursandas Oovindji v. Fundravandas Pursholam. (1864) 1 Suth W R 847 (348), Woomachurn Banerjee v. Haradhun Mojoom-
 - (1865) 2 Suth W R 197 (200), Chundro Seekhur Roy v. Nobin Soondur Roy.
 - (1867) 8 Suth W R 519 (522, 523), Ram Sherul, Roy v. Sheo Gorind Sahoo. (1868) 10 Suth W R 276 (277), Suntolhee Thaloor v. Mt. Balasce Koonwur.
 - (1869) 11 Suth W R 183 (184) : 2 Beng L R App 39, Copal Mullick v. Oncop Chunder Ron.
 - (1882) 10 Cal L R 837 (315), Sheo Narain Singh v. Rhurgo Koerry.

 - (1879) 1879 Pun Re No. 15, Mt. Jas Deri v. Shib Dayal.
 - (1898) 1898 Pun Re No. 79, Chiragha v. Mahtaba. (1912) 1912 Pun L R No. 198, Kesho Das v. Nathu Mal.
 - (1915) A I R 1915 Lah 353 (354) : 27 Ind Cas 699, Haham Singh v. Inder. (1918) A I R 1918 Mad 659 (660); 42 Ind Cas 540, Venhatramanayna v.

hunmuga Velasudhan

v. Bhiwa.

Daisens Pands

Ind Cas 41, Wanideo

- (1919) A I R 1919 Ondh 213 (214): 22 Oudh Cas 156; 52 Ind Cas 845. Achhaibar Singh v. Hargobind Singh.
- (1925) A I R 1925 Oudh 164 (166) : 78 Ind Cas 65, Ray Dulars v. Chandesar
- (1933) A I R 1933 Oudh 170 (172); 8 Luck 538; 150 Ind Cas 346, Rajeshar Bals v. Harkishen Bali (1911) 10 Ind Cas 387 (388): 1911 Pan Re No. 32, Kalure Khan v. Ghulam
- 3. (1990) 14 Pam 100 (400) (- -----
-
- 4. (1912) 14 Ind Cas 71 (72): 1912 Pun Re No. 52, Nur Ahmad v. Rahim Bakhsh.
 - (1907) 6 Cal L Jour 490 (522), Roy Radha Kissen v. Nauralan Lall. (1892) 1882 Pun Re No. 141, Budda v. Khan.
 - LIGHOL TODO TO.
- 1. Duaynati Prasad. 5. (1922) A TR 1922 P C 414 (415): 47 Bom 146: 50 Ind App 103: 72 Ind Cas 202 (P C), Khatubai v. Md. Hajee Abu.

A suit by a Muhammadan entitled to socceed to another Muhammadan on the death of a female when such female is by such custom entitled only to a limited estate, would be governed by this Article.⁶

Since the cause of action is the death of the female, the third column of the Article provides that time will begin to run from such death. This is in accordance with the general principle of the law of limitation that a person can only be coosidered to be baried, if he has a right and does not exercise that right within the period pre-cribed, the maxim being contra non realentem agere nulla currit prastriptio — Prescription does not run against a party under disability or who is unable to act.

Io order to claim the benefit of the Article the plaintiff must prove firstly, that there was a qualified estate in a Hindu or a Muhammadan female, secondly, that he was entitled to possession after her death as the heir of the last male holder, and thirdly, having regard to the existing law, he was entitled to possession on the date of the suit.⁵

3. "Like sult." — These words show that this Article is to be read, along with Article 140¹ and, so read, they mean a suit for possession of immorable property. They cannot be taken to imply that the suit must be in respect of an estate created in the same way as the estate upon which the estate io remander or reversion contemplated by Article 140 leans, that is to say, by grant or devise or that it must be no estate characterized by the same incidents which attach to such a particular estate. As has been seen to the Notes to Article 140 ante, the words "reversioner" and "remaioderman" in that Article have been used in the technical and strict sense in which they are used in English hav and do not include a person like a Hindu reversioner who has only a possibility of reverter to the estate. In the latter case this Article would apply.

But the principle underlying the two Articles is the same, namely that time runs when the estate opens out for the henefit of the plaintiff, whether he is a remaindermae or reversioner in the strict

Note 3

Articls 141 Notes 2—3

 ⁽¹⁹³⁰⁾ A 1 R 1930 P C 35 (36, 38): 121 Ind Cas 517: 57 Ind App 29: 5 Luck
 (P Cl. Roshan Al: Khan v. Ashqar Al:.

⁽¹⁹³⁰⁾ A I R 1930 Lah 111 (112): I25 Ind Cas 52, Lehna v. Nur Ahmad.

^{7. (1928]} A I R 1928 Oudh 155 (189, 190): 108 Ind Cas 817, Abdul Halim Khan . Saadat Ali Khan.

 ⁽¹⁹²⁴⁾ A 1 R 1924 Pat 721 (728): 3 Pat 880: 83 Ind Cas 812, Kesho Prasad Singh v. Madho Prasad Singh.

 ⁽¹⁹¹⁸⁾ A I R 1918 Oudh 52 (53): 44 Ind Cas 363: 21 Oudh Cas 1, Bisheshar Baksh Singh v. Rameshar Baksh Singh.

^{2, (1921) 64} Ind Cas 462 (464) (All), Jagrans Misrans v. Sheo Dulars,

^{3 (1916)} A I R 1916 Oudh 50 (54): I8 Oudh Cas 289: 33 Ind Cas 371, Ghisa Singh v. Gajraj Singh

 ⁽¹⁹²⁴⁾ A I R 1924 Pat 721 (727, 728): 3 Pat 880: 83 Ind Cas 612, Keshav Prasad Singh v. Madho Prasad Singh.

^{5, (1895) 8} C P L R 102 (105), Nelhantrao v. Tukaram.

sense in which the expression is used in English law or whether he is a person who succeeds upon the cessation of the peculiar limited estate under the Hindu law. This Article may, in this sense, he said to he an extension of Article 140 with special reference to persons succeeding to an estate upon the cessation of the peculiar estate of a limited owner under the Hindu law.⁶

A suit for a declaration of sight to property or for the construcor of a will or codicil a is not within this Article. Such a suit filed before the death of the female is not within this Article, because the plaintiff would not then be entitled to possession of the property. Nor will such a suit lie at all after the death of the female inasmuch as the plaintiff, being entitled to the further relief of possession, would be barred by the Proviso to Section 42 of the Specific Relief Act, 1377, from filing a suit for a mere declaration of right.

4. "By a Hindu or Muhammadan," - It has been seen in Note 5 to Article 125 ante, which is in pari materia with this Article, that the words "hy a Hindu or Muhammadan, etc." in that Article refer to eases in which the claim of the Hindu or Muham. madan is based upon his right as a Hindu or Muhammadan, that is, to cases where the right arises under the personal law of the parties. It has also been seen in Note 2 to Articles 128 and 129 ante that those Articles apply only where the right is claimed, not on the hasis of contract, but on the basis of status of the plaintiff under the Hindu law. The same principle of interpretation must, it is conceived, be adopted in this Article also. It has accordingly been held by the Chief Court of the Punish in Balden Singh v. Mohan Singh,1 that the Article did not apply where A, B and C entered into a compromise by which they left certain property to D. a Hindu widow (who was not entitled to it as heir), after whose death it was to revert to them, and A, after D's death, sued for possession of his share of the property. Their Lordships observed that the Article applied only to cases where a female had succeeded as heir and not by favour or in some other capacity. In Bibi Sahodra v. Rai Jang Bahadur, a case decided by the Privy Council in 1881, certain properties bad been given to a Hindu widow by a compromise decree to belong to her for life and to revert to A after her death A's heirs instituted a suit for possession of the property within twelve years of the death of the widow but beyond twelve years of the alienation which had been made by her in breach of a

 ⁽¹⁹¹⁶⁾ A I R 1916 Bom 300 (301): 40 Bom 239: 33 Ind Cas 484, Jayavant Jenen Rao v. Ramchandra Narayan
 (1920) A I R 1930 Bom 545 (346): 54 Bom 837: 127 Ind Cas 697, Shankar-

bha: Dajibhas v Bai Shiv. (1936) A I R 1936 Lah 835 (836) . 165 Ind Gas 149, Ishar Das v. Ghulam Mohammad.

⁷a (1893) 20 Cal 906 (924, 925), Chukkun Lal Roy v. Lolit Mohan Roy. Note 4

^{1. (1914)} A I R 1914 Lah 458 (459, 460) : 22 Ind Cas 855.

^{2. (1881) 8} Cal 224 (229) : 8 Ind App 210 : 6 Ind Jur 108 · 4 Sar 294 (P C).

condition against alienation. It was held by their Lordships of the Privy Council that Articles 142 and 143 and the Act did not apply to the case, but that the suit was within time as the possession of the alience was not "adverse" to A until the widow's death. Their Lordships did not refer to Article 141, nor was the Article cited at the Bar. The discussion of the question when the possession became adverse makes it clear that their Lordships dealt with the case as one coming under Article 144 and not Article 141, See also the undermentioned case.³

It has however been held in several decisions that this Article applies to cases where the female was in possession not as an heir under the Hindu law but under an agreement, 6 or na marad, 6 or by virtue of having acquired a limited estate by adverse possession, 6 or by custom, or in some other way, 12 But an examination of the cases will show that the question whether the Article applies to cases where the plaintiff's title is otherwise than under the personal law of the parties, was not specifically raised or dealt with. It is submitted that they cannot be accepted as currect in this respect.

The "Hindu or Muhammadan" contemplated by this Article may he a male or a female. Thus, a daughter succeeding to a widow must sue for possession within 12 years of the widow's death. Similarly,

- 3. (1927) A I R 1927 Nag 2926 (229): 101 Ind Cas 822, Decram Gujar v. Byta Gujar. (Co-widow in possession of property for life under compromise Altenation by her Sust by the other widow after death of the co-widow for possession—Possession regarded adverse only from death Article 141 was not referred to Article 142 must be taken to have been applied.)
 4. (1927) A I R 1937 All 193 (189, 189): 167 Ind Cas 527, Sarju Bai v. Charrence
- man, Municipal Board, Jhann. (After mother of last male owner, grandmother was the heir, but under an agreement the sister was entitled to take the estate Held Article 141 applied.)
 - (1934) A I R 1934 Rom 110 (112) : 58 Bom 280 : 149 Ind Cas 674, Bhagarthabas v. Appa Dada.
 - (1935) A I R 1935 Cal 702 (704): 159 Ind Cas 1101, Hemendra Nath Roy v. Juanendra Prasanna.
- (1894) 8 C P L R 102 (104, 105), Nelkantrao v. Tukaram. (Settlement award)
- (1937) A I R 1937 All 268 (270): I L R (1937) All 424: 169 Ind Cas 586, Rashik Lel Chaube v. Mt. Radha Dhulanga.
- 6. (1934) A I R 1934 Oudh 190 (194): 150 Ind Cas 495: 9 Luck 484, Gaya Bakhih Singh v. Deo Singh.
- 7. (1912) 14 Ind Cas 71 (72): 1912 Pnn Re No 52, Nur Ahmad v. Rahim Bakhih.
 - (1907) 1907 Pun Re No. 145 . 1907 Pun W R No 185, Maran Bakhsh v. Ahmad.
 - (1892) 1892 Pun Re No. 31 (F B), Budhe Khan v. Makhe Khan.
 - (1919) A I R 1919 Lah 448 (449]: 1918 Pun Re No. 95: 47 Ind Cas 977, Ganesh Ram v. Panju Singh.
 - (1914) A I R 1914 Lalı 452 (453): 1914 Pun Re No. 29: 24 Ind Cas 212, Bhagat Singh v. Sher Singh.
- (1937) A I R 1937 Oudh 4 (9): 12 Luck 592: 165 Ind Cas 322, Irshadulla Khan v. Mt. Fahhra Degam.

Article 141 . Notes 4-6

it was held that a suit by a sister of the last male owner who succeeded after his mother was governed by this Article.9

- 5. "Entitled" means entitled independently of the right of the female. - The word "entitled" must be understood as meaning "entitled independently of the right of the Hindu or Muhammadan female,"1 A Hindn reversioner, for example, becomes entitled to the property as succeeding to the last male owner and not to the widow and is therefore a person "entitled to the possession of the property on the death of the Hindu female" within this Article. But the heir of a Hindn or Muhammadan female who is a full owner of the property is not a person entitled to the property independently of the right of the female, but merely derives his right through her. A suit by such heir for possession of the property inherited by him from the female is, therefore, not one soverned by this Article.2
- 6. Plaintiff must be entitled to possession on the death of the female. This Article does not apply unless the plaintiff became entitled to possession immediately on the death of the female. Where a Hindu female alienates property by a usufructuary mortgage for necessity, the reversioner would not be entitled to the possession thereof immediately on the death of the female. He would be entitled to it only after redemption. A suit, therefore, by the reversioner for possession only, without asking for redomption is not maintainable nor is it governed by Article 141,1 A suit for redemption would not also be barred under this Article, oven though it was filed more than twelve years after the death of the fomale.2 Where a widow has validly let out the property to a tenant-at-will and the reversioner sues for possession after the death of the widow, this

Note 5

us 368. Brsheshar

id Cas 626, Zaraf-

153, Malkartun

Note 6

⁽¹⁹¹⁶⁾ A T R 1916 All 47 (48): 39 All 117: 32 Ind Cas 127, Ramsingh v. Mt. Bhans.

^{9. (1937)} A I R 1937 All 188 (189) : 167 Ind Cas 527, Sarju Bai v. Chairman. Municipal Board, Ihansi.

^{1. (1916)} A I R 1916 Oudh 50 (54) : 18 Oudh Cas 289 : 33 Ind Cas 371, Ghisa Singh v. Gajraj Singh. (1918) A I R 1918 Oudh 32 (53) : 21 Oudh Cas 1 : 44 Ind Cas 368, Bisheshar

Baksh Singh v. Rameshar Bakhsh Singh .-

⁽¹⁹²³⁾ A I R 1923 Oudh 185 (201) : 26 Oudh Cas 183 : 75 Ind Cas 626, Zarsfun-nissa v. Shafiq-uz-Zaman 2. (1888) 10 All 343 (346) : 1888 All W N 38, Hashmat Begam v. Mazhar Hus-

⁽¹⁹¹⁶⁾ A 1 R 1916 Oudh 50 (54): 18 Oudh Cas 289: 33 Ind Cas 371, Ghisa Sungh v. Gajraj Sungh.

^{1. (1913) 18} Ind Cas S11 (813) (All), Ganga Sahai v. Kanhaiya Lal. . 2. (1888) 1888 Pun Re No. 10, Buta Singh v. Jhagra.

Article will not apply and time will not run from the death of the widow but from the expiry of the tenancy.

7. "On the death of a Hindu or Muhammadan female."—
The pluntiff must be a person who becomes "cotilide" in the sense replained in Note 5 ante, on the death of a Hindu or Muhammadan female. A son adopted by a Hindu widow becomes, under the Ilindu law, entitled to the property inherited by the adoptive mother, transcatistly on adoption and not on her death; consequently, a suit by such adopted son for possession of the property so got by him is not one within this Article. A son adopted by the last male owner himself is entitled to the possession of his property immediately on the death of such owner and not on the death of his widow, and a suit by him for possession would be governed not by this Article but by Article 144, and would be barred after twelve years of the owner's death."

Where a Hindu widow makes an alienation of her husbaod's property and subsequently adopts a son to him, the alienation, if it has not been made for necessity, is not binding on the adopted son who can immediately on adoption sue for recovery of such property. The alienation is not good till the hietime of the adoptive mother so as to enable the adopted soo to take advantage of this Article and file a suit within twelve years of her death.

It may also be stated here that even adverse possession against a widow is not adverse to the son adopted by her subsequently. Possession can be adverse to him only from the date of his adoption. Where A and B, daughters of X, succeed to X pointly and subsequently A dies, B gets the property by survivorship and canoot be

. .

Article 141 Notes 6-7

 ^{(1907) 1907} Pun L R No. 91 - 1906 Pun Re No. 90 : 1906 Pun W R No. 137, Ghudu Sinjh v. Khushal Singh Note 7

 ⁽¹⁹¹⁸⁾ A I R 1918 Mad 469 (472): 41 Mad 75: 42 Ind Cas 245 (F B), Vaidyanatha Sastri v. Sauthrs Ammal. (Overruling 26 Mad 143.)

⁽¹⁹²⁸⁾ A I R 1928 Oudh 155 (194) . 108 Ind Cas 817, Abdul Halim Khan v. Saadat Ali Khan.

^{(1909) 1} Ind Cas 647 (648) : 33 Bom 88, Ramkrishna v. Trspurabai.

^{(1894) 19} Bom 809 (814, 815), More Narayan v. Balaji Raghunath. (1905) 9 Cal W N 795 (801) : 2 Cal L Jour 87, Harek Chand v. Bezoy Chand.

^{2. (1904) 1904} Pun Re No 3: 1904 Pun L R No. 43, Ram Naram v. Maharan Naram.

 ⁽¹⁹¹⁸⁾ A I R 1918 Mad 469 (472) · 41 Mad 75 : 42 Ind Cas 245 (F B), Vaidyanatha Sastri v. Savithri Ammal.

^{(1909) 1} Ind Cas 647 (648) - 83 Bom 88, Ramhrishna v. Tripurabas.
[See also (1907) 1907 AR W N 146 (149): 4 All L Jour 354, Sahdeo Singh v. Ramnandan Singh.]

^{(1900) 2} Bom L R 411 (414), Hars Vithal v. Waman Hari. (19 Bom 809, Followed)

^{(1888) 13} Bom 276 (279), Krishnazi Janardhan v. Morbhal.

^{(1905) 9} Cal W N 795 (801) : 2 Cal L Jour 87, Harel Chand v. Bejoy Chand.

Articls 141 Notes 7—8

said to become entitled to it on the death of A. Where therefore Y was in adverse possession of the estate inherited by A and B for more than twelve years, Y would get absolute title to the interests of A and B in the property under Section 28 and B cannot, after A's death, contend that as to A's sbare she got a fresh right to sue for possession.⁵

8. Suit by a transferee from a Hindu or Muhammadan entitled etc. - It would follow from what has been stated already that a suit for possession by a transferee from a Hindu er Muhammadan entitled to the possession of immovable property on the death of a Hindu or Muhammadan female is oot one falling withio this Article. The transferee would not be entitled by virtue of the personal law governing the parties but by virtue of the right obtained by the transfer. The case would be covered by Article 136 ante which provides for a suit by a purchaser for possession of property sold when the veodor was out of possession at the date of the sale. The starting polot under that Article is the date "when the vendor is first entitled to possession." If the vendor is such a person as is contemplated by Article 141 as a plaintiff, he will become entitled to possession on the death of the female; so that the result will be that even though Article 136 may apply, the startiog point will be the death of the female 1

There have, however, been several cases where this Article has been applied or has been assumed to apply to suits by transferees from reversioners cottiled to possession on the death of a Hiodu or Muhammadan female. But the question discussed above was not specifically raised in those cases. They cannot be accepted as correct co principle to this respect.

 J. (1915) A. I. R. 1915 Cal. 234 (234): 27 Ind Cas. 250, Sachindra Kishore v. Rajant Kanla.
 Rajant Kanla.
 Rajant Kanla.
 Rajant Kanla.
 Rajant Kanla.
 Rajant Kanla.

Note 8

*1. (1904) 8 Cal W N 585 (538), Gadadhar Roy v. Hare Krishna Sarhar.

(1904) 8 Cal W N 802 (804), Narmada Debi v. Shosi Bhusan,

 (1912) 14 Ind Cas 71 (72): 1912 Pon Re No. 52, Nur Ahmad v. Rahim Bahksh.
 (1916) A I B 1916 Mad 709 (710): 30 Ind Cas 991, Srinivasa Raya v. Ram-

appa Hebbara. (1898) 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1897 All 30 No. 1898 20 All 42 (46): 1898 20 No. 1898 20 No.

assumed that Art of other facts by

Kanta.

(1922) A I R 1922 Mac

Ramich v. Kusru Kotamma. (Do.)

(1915) A I R 1915 Cal 629 (633) : 27 Ind Cas 954, Mohendra Nath Biswas v. Mt. Shawistinicsa Khatun. (Do) (1920) A I R 1920 Pal 291 (320) : 47 Ind Cas 929, Sahdeo Naram v. Kusum

Kumari (Do)

(1986)

9. Death, if includes civil deeth—Effect of surrender by femele or re-marriege of widow.— It has been hold by the Judicial Commissioner's Court of Nagpur' and the High Court of Lahore' that the re-marriage of a Hindu widow amounts to her civil death, that Article 141 will cover cases of such civil deaths also and that therefore a sut by the next reversioner for possession of property on the ground of re-marriage of the widow would be governed by Article 141. On the other hand, the High Court of Calcutta has doubted the correctness of this view. It is submitted that the view of the Nagpur and Lahorn Courts is not correct. It would be straining the language of the Article to read the words "when the female dies" in the third column of the Article as including cases of ciril deaths.

Where a Hindu female owning a limited estate under the Hindu law surrenders her estate to the next reversioner, she effaces herself from the succession as if she had deed and the inheritance is accelerated in favour of the next reversioner.\(^4\) As was abserved by their Lordships of the Privy Council in Sitanna v. Viranna\(^3\)**though the doctrine of surrender by a widow has undergone considerable development in recent years, it must be remembered that the basis of it is the effacement of the widow's interest, and not the vaface transfer by which such effacement is brought about. The result is merely that the next heir of the husband steps into the succession in the widow's place" On the view that 'death' within the meaning of this Article does not include eval death, it would follow that the reversioner in whose favour a surrender is made by the female owner hecomes entitled to the property, not "on the death of the female"

Note 9

- 1 (1915) A I R 1915 Nag 57 (57) : 11 Nag L R 86 : 29 Ind Cas 612, Nathu v. Mt. Nat Bahu.
 - [See also (1930) A I R 1930 Nag 204 (204) : 27 Nag L R 1 : 128 Ind Cas 906, Ganpat v. Narayan. (Nothing was however said about Art. 141 applying to the case]]
- (1930) A I R 1930 Lah 291 (295) : 120 Ind Cas 610, Sawai Ram v. Arjun Singh.
- 3 (1929) A I R 1928 Cai 714 (715) : 117 Ind Cas 703, Telettama Dan v. Madhusudan Gere.

.

- (1884) 10 Cal 1102 (1108) (F B), Nobelishore Sarma Roy v. Hars Nath Sarma Roy.
- (1924) A Î R 1924 All 166 (167) : 79 Ind Cas 25 : 46 All 59, Mt Sartajı v. Ramjas (Revening A I R 1922 All 401.)
 [See also (1916) A 1 R 1916 Cal 606 (608): 30 Ind Cas 578, Sarabjıt v. Bhaguat Koers
 - (1891) 19 Cal 236 (241, 242) : 19 Ind App 30 : 6 Sar 88 (PC), Behari Lal v. Madho Lal.
- 5. (1931) A 1 R 1934 P C 105 (108) · 148 Ind Cas 828; 61 Ind App 200 : 57 Mad 749 (P C).

Artiole 141 Note 9

y. Bhswa.

within the meaning of this Article but by reason of the surreoder. A suit therefore by the surrederee for possession of the estate surrendered is not governed by this Article.5a

There is no difference in priociple whether the surrenderee is a male or female reversioner,6 except that io the latter case the female reversioner takes only a limited estate. Where A, a Hindu widow surrenders her estate in favour of her daughter B, but B dies before A, and the next male reversioner brings the suit for possession of the property, the cause of action would be the death of B and oot the death of A.7 Io Viranna v. Sitanna, where the facts were as stated above. Phillips. J., observed as follows: '

"If the widow is effaced, so far as the estate is concerned, there is no ground for holding that her right is revived by the death of her daughter during her lifetime. The effacement is made in order to accelerate succession to her husband's estate. On the snrrender therefore the next heir takes the property and when that heir dies, the devolution must continue in favour of the next reversioner and the succession cannot be interrupted by the mere fact that the widow is still alive. After the daughter, the deccased's estate must go to the next reversioner, and it cannot be contended that the widow is in any sense a reversioner."

The judgment of Phillips, J., was affirmed by the Privy Council io Sitanna v. Viranna.9

The proposition that the surrenderes gets, immediately oo the surrender, a right to the possession of the property surrendered, is however subject to ooo qualification. Where before the surreoder the widow or other female has alrecated the property, the subsequent surreoder does not, uoder the Hindu law, entitle the reversioners to immediate possession of the portion alienated. They must wait until her death.10 The reason is that though the alienation is not binding on the reversioner, it is binding on the widow for her life and the alience is entitled to possession during her lifetime. It follows that a suit by the reversioner against the alience from the female

⁵a (1911) 12 Ind Cas 481 (431, 432) (Lah), Nawaz v. Muhammad Ahsan. (Case of transfer of right by widow to reversioner.-Suit by latter for possession-Article 144 applies)

^{6. (1934)} A I R 1934 P C 105 (108) : 148 Ind Cas 828 : 61 Ind App 200 : 57 Mad 749 (P 0), Sitanna v Viranna,

^{7. (1924)} A 1 R 1924 All 166 (167) : 46 All 59 : 79 Ind Cas 25, Mt. Sartaji v. Ramjas.

^{8. (1931)} A I R 1931 Mad 218 (221) : 128 Ind Cas 701.

^{9. (1994)} A I R 1934 P C 105 (108): 148 Ind Cas 828: 61 Ind App 200: 57 Mad 749 (P C). (1927) A I R 1927 Mad 530 (531): 100 Ind Cas 639, Ramayya v. Narayya.

⁽¹⁹²⁷⁾ A I R 1927 All 258 (262) : 100 Ind Cas 764 : 49 All 334, Lachhmi Chand v. Lachho. (1927) A I R 1927 Mad 429 (430, 431) : 100 Ind Cas 590, Karuppa Pillat v.

Irulanee.

made before the date of the surrender will be governed by this Article. 11

Article 141 Notes 9-10

Where a surrender is made by a female reserving some property to herself for maintenance, the heir will, as regards such property, be entitled to possession only on the death of the female and a suit by the heir for possession of such property would be governed by this Article.¹⁹

40. "Hindu nr Muhammadan female." — These words do not cover the case of a female who is trustee. Her position as trustee possesses a distriction from that occupied by her with reference to her husband's estate vesting in her by inheritance beneficially. In Pydayantam Jaggannadha Ron v. Rama Doss Patnail, 'a temple was dedicated by one J to the public and J acted as trustee thereof during his lifetime. He died childless and his widow who succeeded him as trustee, transferred her right of trusteeship along with certain temple property to the defendant in the year 1885 and subsequently died in 1897. The plaintiffs brought a suit in 1900 for recovery of the office and the land as being trustees in succession to her. The question aross whether Article 121 ante or this Article applied to the case Their Lordshupe observed:

"Her (the widow's) position as trustee possesses a distinction from that occupied hy her with reference to her husband's estate vesting in her by unheritance beneficially, which makes it apparent that the case is not really one within the scope of the said rule. As regards property inherited by a widow beneficially. the roversioner cannot claim relief by way of possession so long as she is alive, and a transfer by her would, at all events, be valid till her death. It is different in both respects here. Her powers of transfer are precisely those of a male trusteo In other words, notwithstanding that the office would not, after the death of the female trustee, descend to her heir, the trust estate during her incumbency for all other purposes resides in her as fully and effectually as it does in a male trusteo. The leason for the rule on which Article 141 is founded being thus inapplicable, the adoption of the principle of that rule here would not be warranted."

It was accordingly held that the suit was governed by Article 124 and not this Article. This view was followed by the High Court of Calcutta in the undermentioned case. See also the undermentioned case where the question was raused but not decided.

^{11 (1915)} A I R 1915 Mad 656 (658) : 26 Ind Cas 1, Sungaram Chelliar v. Kal-

^{12 (1931)} A I R 1931 Mad 218 (221): 128 Ind Cas 701, Verranna v. Silanna. (Affirmed by the Privy Council in A I R 1934 P C 105)

^{1. (1905) 28} Mad 197 (201). Note 10

^{2. (1907) 6} Cal I. Jour 621 (636), Lalabata Misrain v. Bishun Chobey.

^{3 (1916)} A I R 1916 Mad 465 (467): 30 Ind Cas 962, Suppa Bhattar v. Suppa Solhana Phattar.

within the meaning of this Article but by reason of the surrender. A suit therefore by the surrenderee for possession of the estate surrendered is not governed by this Article.^{6a}

There is no difference in principle whether the surrenderce is a male or female reversioner, except that in the latter case the female reversioner takes only a limited estate. Where A, a Hindu widow surrenders her estate in favour of her daughter B, but B dies before A, and the next male reversioner hrings the suit for possession of the property, the cause of action would be the death of B and not the death of A. In Viranna v. Sitanna, where the facts were as stated above. Phillus, J., observed as follows:

"If the widow is effaced, so far as the estate is concerned, there is no ground for holding that her right is revived by the death of her daughter during her lifetime. The effacement is made in order to accelerate succession to her husband's estate. On the surrender therefore the next heir takes the property and when that heir dies, the devolution must continue in favour of the next reversioner and the succession cannot be interrupted by the mene fact that the widow is still alive. After the daughter, the deceased's estate must go to the next reversioner, and it cannot be contended that the widow is in any sense a reversioner."

The judgment of Phillips, J., was affirmed by the Privy Council in Sitanna v. Viranna.

The proposition that the surrenderee gets, immediately on the surrender, a right to the possession of the property surrendered, is however subject to one qualification. Where before the surrender the widow or other female has allenated the property, the subsequent surrender does not, under the Hindu law, entitle the roversioners to immediate possession of the potion allenated. They must wait until her death. The reason is that though the allenation is not binding on the reversioner, it is binding on the widow for her life and the alsenee is entitled to possession during her lifetime. It follows that a suit by the reversioner against the allenee from the female

⁵a.(1911) 12 Ind Cas 431 (431, 432) (Lah), Nawaz v. Muhammad Ahsan. (Case of transfer of right by whom to reversioner—Sut by latter for possession—Article 144 applies)

 ⁽¹⁹³⁴⁾ A I R 1934 P C 105 (108): 148 Ind Cas 828: 61 Ind App 200: 57 Mad 749 (P C), Sslanna v. Vsranna.

^{7. (1924)} A I R 1924 All 166 (167): 46 All 59: 79 Ind Cas 25, Mt. Sartafi v. Romfas.

^{8. (1931)} A I R 1931 Mad 218 (221) : 128 Ind Cas 701.

^{9 (1934)} A I R 1934 P C 105 (108) . 148 Ind Cas 828 . 61 Ind App 200; 57 Mad 749 (P C).

 ⁽¹⁹²⁷⁾ A J R 1927 Mad 530 (531): 100 Ind Cas 633, Ramayya v. Narayya.
 (1927) A J R 1927 All 258 (262): 100 Ind Cas 764: 49 All 334, Lachhmi
 Chand v. Lachho.

⁽¹⁹²⁷⁾ A 1 R 1927 Mad 429 (430, 481) . 100 Ind Cas 580, Karuppa Pillai v. Irulance.

made before the date of the surrender will be governed by this Article.11

Article 141 Notes 9—10

Where a surrender is made by a femalo reserving some property to herself for maintenance, the heir will, as regards such property, ho entitled to possession only on the death of the female and a suit by the heir for possession of such property would be governed by this Article 19

10. "Hindu or Muhammadan female." — These words do not cover the case of a female who is a trustee. Her position as a trustee possesses a distinction from that occupied by her with reference to her husband's estate vesting in her by inheritance hemeficially. In Pydigantam Jaggannadha Row v. Rama Doss Patnail., a temple was dedicated by one J to the public and J acted as trustee thereof during his lifetime. He died childless and his widow who succeeded him as trustee, transferred her right of trusteeship along with cortain temple property to the defendant in the year 1885 and subsequently died in 1897. The plaintiffs brought a suit in 1900 for recovery of the office and the land as being trustees in succession to her. The question arose whether Article 124 ante or this Article applied to the case Ther Lordships observed:

"Her (the widow's) position as trustee possesses a distinction from that occupied by her with reference to her husband's estate vesting in her by inheritance beneficially, which makes it apparent that the ease is not really one within the scope of the said rule. As regards property inherited by a widow beneficially, the reversioner eannot claim relief by way of possession so long as she is alive, and a transfer by her would, at all events, be valid till her death. It is different in both respects here. Her powers of transfer are precisely those of a male trustee. . . . In other words, notwithstanding that the office would not, after the death of the female trustee, descend to her heir, the trust estate during her incumbency for all other purposes resides in her as fully and effectually as it does in a male trustee. The reason for the rule on which Article 141 is founded being thus inapplicable, the adoption of the principle of that rule here would not be warranted."

It was accordingly held that the suit was governed by Article 124 and not this Article. This view was followed by the High Court of Calcutta in the undermentioned case ² See also the undermentioned case ³ where the question was raised but not decided.

^{11. (1915)} A I R 1915 Mad C56 (658) : 26 Ind Cas 1, Singaram Chelliar v. Kal-

 ⁽¹⁹³¹⁾ A I R 1931 Mad 218 (221): 128 Ind Cas 701, Verranna v. Silanna. (Affirmed by the Privy Council in A I R 1934 P.C 105.)

^{1. (1905) 28} Mad 197 (201). Note 10

^{2. (1907) 6} Cal L. Jour 621 (636). Lelabata Masrain v. Bishun Chaben.

 ⁽¹⁹¹⁶⁾ A I R 1916 Mad 465 (467) : 30 Ind Cas 962, Suppa Bhattar v. Suppa Solkaya Bhattar.

Article 141 Notes 10---11

It has been seen in Note 4 ante that this Article applies only to cases where the right of the plaintiff arises under the personal law. of the parties, i. e. to cases where the plaintiff claims to succeed only in right of heirship under the personal law governing the parties. It fellows that the Article is not applicable where the female was in possession, not by reason of her being entitled by law to succeed to a limited estate, but in some other capacity, for example, by contract or by favour or as a legatee or trespasser. For, in these cases, the plaintiff cannot be said to be entitled to possession solely on the ground of his heirship under the personal law governing the parties. '

11. "Immoveable property." - This Article applies only to suits for possession of immovable property. It does not apply to suits to recover moveable property to which the plaintiff becomes entitled on the death of a Hindu or Mahomedan female; such a suit will be governed by Article 120.1 See Nate 12 under Article 120 ante. It has been held by the Privy Council in Runchordas Vandravandas v. Parrati Bar that the right to sue, for the purposes of Article 120, will in such cases arise on the date of the widow's death.

It has been seen in Note 4 to Article 3 and Note 19 to Article 132 that the expression "immoveable property" in this Act must be construed in the sense in which it is defined in the General Clauses Act, 1897. The following interests have been held to be immovable property within this Article:-

- 1. The interest of a mortgagee of immovable property.
- 2. A share in the partnership of a ginning factory,4

The following interests are not immovable property within this Article :--

- A right of malikana.⁵
- 2. Money into which immovable property is converted.

Note 11

- 1. (1922) A I R 1922 Cal 321 (328) · 49 Cal 45; 61 Ind Cas 980, Pramatha Nath Bose v. Bhuban Mohan Bose.
 - (1928) A I R 1928 Cal 670 (674) : 55 Cal 903 : 112 Ind Can 496, Aurabindo Nath v. Monorama Debt. (The case is however not correct on another point, namely the effect of the adverse possession against the widow.)
 - (1899) 23 Bom 725 (736) : 26 Ind App 71 : 1 Bom L R 507 ; 3 Cal W N 621: 7 Sar 543 (P O), Runchordas Vandrasandas v. Parvati Bai.
- 2. (1899) 23 Hom 725 (736) : 26 Ind App 71 : 1 Hom L R 607 : 3 Cal W N 621 :
- 7 8ar 513 (P C)
- 3 (1924) A I R 1924 Oudh 218 (221) : 78 Ind Cas 393, Jai Indar Bahadur Singh v. Sheo Indar Bahadur Singh.
- 4. (1931) A I R 1931 AH 225 (227): 121 Ind Cas 19, Mt. Basants Bibs v. Babu Lal Poddar.
- 5. (1929) A I R 1929 P C 166 (169) : 56 Ind App 267 : 117 Ind Cas 498 : 51 All 489 (P C), Mt Jaggobar v. Utsara Lal.
- 6. (1918) A I R 1918 Pat 548 (551) : 46 Ind Cas 627, Radha Kishen v. Nauratan Lal.
 - (1908) 10 Bom L R 210 (230), Campairas . Vamanrao.

12. Suit contemplated is one against a person in possession. — The sut ler possession contemplated by this Article is one against a person who is in possession of the property to which the plaintiff his become entitled on the death of a Hindu or a Mahomedan female. If, for example, at the death of the female no one was in possession, but several years later, defendant got into possession, a suit by the person entitled to succeed on the death of the female will not be governed by this Article, time, for such a suit, will run from the date of the defendant's entry into possession, as, up to that date, the plaintiff must be deemed to have been in constructive possession on the principle that possession follows title.

A suit by a Hindu reversioner for possession against the alience from a Hindu female whe is dead, is within this Article. Where a female limited owner makes an alienation which is not binding on the estate, the person who will be entitled to succeed to the property on the death of such female has, in fact, two remedies open to him. He can, during the lifetime of that female, file a suit for declaration that such alienation is void for her liletime. The Article applicable to such a suit is Article 125 ante. He can, after the death of the female, sue fer possession of the property from the alienee in which case this Article will be applicable. The two remedies are not, however, mutually exclusive and the failure to pursue the former remedy does not bar the latter. In other words, it is not a condition precedent to the maintainability of the suit for possession after the death of the lemale that the plaintiff should have sued for, and obtained, a declaration as to the invalidity of the alienation.* The fact that a sout for such a declaration has been allowed to be harred under

Note 12

- 1 (1932) A I R 1932 Cal 504 (505): 138 Ind Cas 349, Mahendranath Bagohi v. Taral. Chandra.
- 2 (1905) 2 Cal L Jour 144 (146), Naba Krishna Roy v. Hem Lal Roy.
- (1905) 33 Cal 257 (261, 269, 272) : 9 Cal W N 636 : 1 Cal L Jour 408, Harshar Ojha v. Dasarathi Misra.
 - (1918) A I R 1918 Lah 288 (289) : 46 Ind Cas 565, Khan Bahadur v. Ibrahim Khan
 - (1911) II Ind Cas 872 (372) (Lab), Jawala v. Indar.
 - (1882) 1892 Pun Re No. 141, Budda v. Khan (Article 114 does not apply)
 - (1892) 1892 Pun Re No. 110, Har Kishen Das v. Allah Bakhsh.
- (1937) A I R 1937 Pat 105 (107): 168 Ind Cas 326, Baldeo Das v. Raghunandan Das.
 (1931) A I R 1931 Mad 597 (595) . 133 Ind Cas 773, Purusholama Ratho v.
 - (1931) A I R 1931 Mad 597 (598) . 133 Ind Cas 773, Purushotama Eatho v. Brindatana Dats (1916) A I R 1918 Mad 659 (660): 42 Ind Cas 540, Venkatramanayya v.
 - Dejappa Konde.
 (1866) 10 Suth W R 276 (277), Suntoline Thalor v. Mt Balasce Koonwur
- (1907) 31 Bom 1 (4): 8 Bom L R 675, Rakhmabas Pandurang v. Keshav Raghunath.
 - (1915) A I R 1915 Bom 242 (243) · 40 Bom 51 ; 30 Ind Cas 909, Mancharam Pranfivandas v. Panubhas Lallubhas
 - (1905) 33 Cal 257 (261, 269, 272): 9 Cal W N 636: 1 Cal L Jonr 408, Harihar Ojhav Dasarath: Musra (The abenatum need not be set aside under Article 91.)

Article 141 Notes 10—11 It has been seen in Note 4 ante that this Article applies only to cases where the right of the plaintifi arises under the personal law of the parties, i. a. to cases where the plaintiff claims to succeed only in right of heitship under the personal law governing the parties. It follows that the Article is not applicable where the formale was in possession, oot by reason of her being cotiled by law to succeed to a limited estate, but in some other capacity, for example, by contract or by favour or as a legatee or trespassor. For, in these cases, the ground of his heirship under the personal law governing the parties.

11. "Immoreable property." — This Article applies only to tuits for possession of immorable property. It does not apply to suits to recover moveable property to which the plaintiff becomes outtied on the death of a Hiodu or Mahomedan formale; such a suit will be govened by Article 120. See Note 12 under Article 120 ante. It has been held by the Privy Concoll in Runchordas Vandravandas v. Parvati Bas* that the right to sue, for the purposes of Article 120, will is such eases arise on the date of the window's death.

It has been seen in Note 4 to Article 3 and Note 19 to Article 132 that the expression "immoveable property" in this Act must be construed in the seese in which it is defined to the General Clauses Act, 1897. The following interests have been held to be immovable monerty within this Article:—

- The interest of a mortgages of immovable property.³
- 2 A share io the partoership of a gioolog factory.

The following interests are not immovable property within this Article:—

- 1. A right of malikana,5
- Mooey into which immovable property is converted.⁶

Note 11

- 1 (1922) A T R 1922 Cal 321 (328) · 49 Cal 45; 64 Ind Cas 980, Pramatha Nath Bose v. Bhuban Mohan Bose
 - [1928] A I R 1928 Cal 570 (674): 55 Cal 903: 112 Ind Cas 490, Aurabindo Nath v. Monorama Debs. (The case is however not correct on another point, namely the effect of the adverse possession against the widow.)
 [1899] 23 Bom 725 (736): 26 Ind App 71: 1 Bom L R 507: 3 Cal W N 621:
- 7 Sat 543 (P C), Runchordas Vandravandas v. Parvati Bai. 2 (1899) 25 Bom 725 (736) . 26 Ind App 71 : 1 Bom L E 607 : 3 Cal W N 621 :
- T 52: 543 (PC)
 3 (1924) A I R 1924 Oadh 218 (221): 78 Ind Cas 393, Ja: Indar Bahadur Singh v. Sho Indar Bahadur Singh.
- (1931) A I R 1931 AN 225 (227): 124 Ind Cas 19, Mt. Basanti Bib; v. Babu Lai Poddar.
- (1929) A I R 1929 P C 166 (169): 56 Ind App 267. 117 Ind Cas 498: 51 All 439 (P C), Mt. Jaggodas v. Utsava Lal.
- (1918) A T R 1918 Pat 548 (551): 46 Ind Cas 627, Radha Kishen v. Nauratan Lal.

(1908) 10 Bom L R 210 (230), Ganpatrao . Vamanrao.

Artiola 14f Note 12

12. Suit contemplated is one against a person in posses. sion. - The suit for possession contemplated by this Article is one against a person who is in possession of the property to which the plaintiff has become entitled on the death of a Hindu or a Mahomedan female. If, for example, at the death of the female no one was 10 possession, but several years later, defendant got into possession, a suit by the person entitled to succeed an the death of the female will not be governed by this Article, time, for such a suit, will run from the date of the defendant's entry tota possession, as, up to that date, the plaintiff must be deemed to have been in constructive possession on the principle that possession follows title.1

A suit by a Hindu roversmer for possession against the alience from a Hindu female who is dead, is within this Article.3 Where a female limited owner makes an alienation which is not binding on the estate, the person who will be entitled to succeed to the property on the death of such femalo has, in fact, two remedies open to him. Ho ean, during the lifetime of that female, file a suit for declaration that such alienation is void for her lifetime. The Article applicable to such a suit is Articlo 125 ante. He can, after the death of the female, suo for possession of the property from the alience in which case this Article will be applieable 3 The two remedies are not, howover, mutually exclusive and the failure to pursue the former remedy does not bar the latter. In other words, it is not a condition procedent to the maintainability of the suit for possession after the death of the female that the plaintiff should have sued for, and obtained, a declaration as to the invalidity of the alienation.4 The fact that a suit for such a declaration has been allowed to be barred under

Note 12

- 1 (1932) A I R 1932 Cal 504 (505) . 138 Ind Cas 349, Mahendranath Baych: v. Taral Chandra,
- 2. (1905) 2 Cal L Jour 144 (146), Naba Krishna Roy v, Hem Lal Roy.
- (1905) 83 Cal 257 (261, 269, 272) : 9 Cal W N 636 : 1 Cal L Jour 408, Harshar Otha v. Dasaratha Masra
 - (1918) A I R 1918 Lah 288 (289) ; 46 Ind Cas 565, Khan Bahadur v. Ibrahım Khan
 - (1911) 11 Ind Cas 372 (372) (Lah), Jawala v Indar.
 - (1852) 1882 Pun Re No 141, Budda v. Khan. (Article 114 does not apply)
 - (1892) 1892 Pun Re No. 110, Har Kishen Das v. Allah Balksh.
- 3. (1937) A I R 1937 Pat 105 (107) : 168 Ind Cas 326, Baldeo Das v. Raghunandan Das.
 - (1931) A I R 1931 Mad 597 (598) : 133 Ind Cas 773, Purusholama Ratho v. Brindayana Dass
 - (1918) A I R 1918 Mad 659 (660): 42 Ind Cas 510, Venkalramanayya v. Dejappa Konde
- (1868) 10 Suth W R 276 (277), Suntokkee Thakoor v. Mt. Balases Koonwur. 4. (1907) 31 Bom 1 (4): 8 Bom L R 675, Rakhmabas Pandurang v. Keshav
 - Raghunath. (1915) A I R 1915 Bom 242 (243) : 40 Bom 51 : 30 Ind Cas 909, Mancharam
 - Pranjuandas v. Panubhas Lallubhas
 - (1905) 83 Cal 257 (261, 269, 272) : 9 Cal W N 636 ; 1 Cal L Jour 408, Harihar Ofha v Dasaralks Masra (The abenation need not be set asideunder Article 91)

Article 141 Notes 12 - 13

Article 125.5 will not affect the maintainability of a suit for possession after the death of the female. In Rangaswamy Goundan v. Nachiappa Goundan, 54 their Lordships of the Privy Council observed as follows:

"It is well settled that though he who may be termed a mesumptive reversionary hoir has a title to challenge an alienation at its inception, he need not do so, but is entitled to wait till the death of the widow has affirmed his character. a character which, up to that date, might be defeated by birth or by adoption "

In the undermentioned case the reversioner filed a claim in execution proceedings against the widow in her lifetime and the claim was dismissed. He failed to file a suit to set aside the claim order within one year of the date thereof. It was held that such a failure did not bar his suit for possession filed after the death of the female.

13. Adverse possession against female-Effect of. - It was established as early as the year 1863, by the decision of their Lordships of the Plivy Council in Katama Natchiar v. Raja of Shiragungal that a Hindu widow represented the inheritance and that a decree fairly and properly obtained against her would be binding not only on her but on the reversionary heirs as well.14

```
(1923) A I R 1923 Pat 122 (128): 68 Ind Cas 394: 2 Pat 217, Kesho Prasad
      Singh v Chandrika Prasad Singh. (Do )
                                                     ': 9 Bom L R 602 .
```

m 133 : 17 Mad L

tar Kaur v. Sohan PIRGIE IDO I

(1918) A I R 1918 Mad 659 (660): 42 Ind Cas 540, Venkatramanayya v. De jappa Konde. (1931) A I R 1931 Mad 597 (593) : 133 Ind Cas 773, Purushotama Ratho v.

Brundayana Dass (1925) A I R 1925 Bom 9 (11): 48 Bom 654 84 Ind Cas 374. Hanamaguda

Shidgonda v. Irgonda Shidgonda.

(1906) 3 Nag L R 35 (40), Anand Rao v. Bansinath. (1870) 13 Suth W R 52 (52, 51, 55): 5 Beng L R 595, Mt. Raj Kunwar v.

Mt Indirni Koonnar. (See also (1915) A I R 1915 Mad 217 (220) ; 24 Ind Cas 519, Chattan

Rajah v. Raman Varma] 5 (1906) 29 Mad 390 (408): 1 Mad L Trm 183: 16 Mad L Jour 307 (F B),

Punnamma v. Perrazu. (1908) 12 Cal W N 857 (858, 859), Mt. Mesraw v. Girjanndan Tevari.

(1865) 2 Suth WR 271 (274), Monshee Sued Amer Al: v. Mohendra Nath

(1882) 1882 Pun Re No. 15, Janahir Singh v. Gusain Lal.

5a (1918) A I R 1918 P C 196 (202) : 42 Mad 523 : 46 Ind App 72 : 50 Ind Cas 498 (P C).

C. (1895) 20 Bom 801 (803), Tas v. Lads.

Nute 13

1. (1863) 9 Moo Ind App 543 (608) : 2 Suth W R 31 : 1 Suther 520 : 2 Sur 25 (PC) 1a. See the following cases to the same effect :

(1917) A I R 1917 P C 95 (98) · 45 Cal 590 · 45 Ind App 85 : 44 Ind Cas 408 (PC), Amrit Narayan Singh v. Gaya Singh.

Lord Justice Turner in delivering the judgment of the Board observed as follows:

Artiole 151 Note 13

"The whole estate would, for the time, he vested in her, absolutely for some purposes, though, in some respects, for a qualified interest; and until her death it could not be ascertained who would be entitled to succeed. The same principle which has prevailed in the Courts of this country as to tennais in tail representing the inheritance would seem to apply to the case of a Hindu widow; and it is obvious that there would be the greatest possible inconvenience in holding that the succeeding heirs were not bound by a decree fairly and properly obtained assist the widow."

In .1mrit Narain Singh v. Gaya Singh, tho principlo of the Singanga decision as regards a unidow's estate under the Hindu law, was applied also to the case of a female other than a widow, where she holds a woman's estate by inheritance under the Hindu law In Harnnath Chatterjee v. Mcharmohun, it was held that the principle of the decision in the Shit aganga case' would apply, even where the decree against the Hindu widow in her lifetime was founded upon the law of limitation. And the same view was followed

- (1897) 19 All 357 (371): 1897 All W N 80, Hanuman Prasad Singh v. Bhaguis Prasad.
- (1898) 20 All 841 (343) : 1893 All W N 65, Thribuwan Sundar Kuar v. Sri Naram Singh.
- (1923) A I R 1923 All 448 (448): 75 Ind Cas 614, Jaggannath Singh v. Sardar Singh.
- (1917) A I R 1917 Bom 11 (13): 42 Bom 69. 43 Ind Cas 233, Ganpati Bhatta Neelmanee v. Ramkrishna Bhatta Shankar Bhatt.
- (1937) A I R 1937 Bom 458 (400): 172 Ind Cas 184: I L R (1937) Bom 906, Madicalappa Irappa v. Subbappa Shankreppa.
- (1914) A I R 1914 Cal 544 (516): 23 Ind Cas 931, Gobindanath v. Mohins Mohun.
- (1912) 14 Ind Cas 142 (143): 39 Cal 887, Jharula Das v. Jalandhar Thahur.
 (1915) A I R 1915 Cal 629 (632): 27 Ind Cas 934, Mohendra Nath Buwas v.
 Mt. Shamuunessa Khalun.
- (1930) A I R 1930 Cal 165 (163): 57 Cal 269: 123 Ind Cas 444, Abinash Chandra v. Narahari Mather.
 - (1898) 1899 Pun Re No 29, Hyra Singh v. Sher Singh,
 - (1909) 3 Ind Cas 984 (935, 986) (Lah), Mt. Mehran v. Qudrut Ullah
 - (1918) A I R 1918 Mad 659 (660): 42 Ind Cas 540, Venhalramanayya v. Dejappa Konde.
 - (1920) A I R 1920 Mad 601 (602): 60 Ind Cas 635, Shunmuga Velayudham v. Koyappa Chetitar.
 - (1924) A I R 1924 Mad 301 (304): 73 Ind Cas 284, Rajagopalan v. Ramamoorthy.
 - (1906) 3 Nag L R 35 (40), Anand Rao v. Bansmath.
 - (1919) A I R 1919 Oudh 213 (214). 22 Oudh Cas 156: 52 Ind Cas 845, Achhaibar v. Har Gobind.
- (1917) A I R 1917 P C 95 (93): 45 Cal 590: 45 Ind App 35: 44 Ind Cas 409 (P C).
- 3. (1693) 21 Cal 8 (18) : 20 Ind App 183 : 6 Bar 334 : 17 Ind Jur 481 (P C).

in Vaithilinga v. Shrirengath Anni.⁴ In the recent case of Rajalakshmi v. Bholanath, ⁴⁰ the rule in the Shiraganga case¹ has been explained as being applicable only where a decree has been fairly and properly obtained against a widow in a suit in which a question of title is in issue and not merely a question of the widow's possession during her life.

The question arises whether the principle of the Shiragangacase' applies to cases of adverse possession against a female limited owner where no decree has been obtained against the female owner. In other words, does the female owner represent the estate for the purposes of limitation with the result that a bar by adverse possession against the female would operate as a har against the reversionary heirs?

Under the Act of 1859 suits for possession of immovable property had to be brought within twelve years of the date when the cause of action arose. In cases of adverse possession against a female, her eause of action arose on the date when the possession became adverse to her-It was held in cases arising under that Act that the female represented the inheritance even for purposes of limitation, that therefore the cause of action was the same both for the female and for the reversionary heirs and that, therefore, where the female was harred and hertitle extinguished by adverse possession, the reversioners would also be barred.6 The basis of the view was that the principle of the Shivaganga case1 was not limited to cases of decrees against a Hindu widow. but extended also to cases of adverse possession against the female owner. On the introduction in 1871 of Article 142, corresponding to this Article, giving the reversioner a period of twelve years from the death of the female, the view that adverse possession which would be a bar against the widow would operate as a bar against the reversionary heirs also, was given up and it was generally held that a female limited owner did not represent the estate for purposes of

^{4. (1995)} A I R 1925 P C 249 (256). 52 Ind App 312. 48 Mad 883; 92 Ind Cas 85. 4a (1939) A I R 1938 P O 254 (257): 177 Ind Cas 1 (P O).

 ^{(1968) 9} Suth W R 505 (503, 509, 510): Beng L R Supp Vol. 1003 (F B).
 Nobin Chunder v. Issur Chunder.

G. ' 3 Sather

Gopal v. Grandra Nath.

^{(1883) 5} All 502 (537): 1883 All W N 117: 8 Ind Jur 206, Adideo Narain-Singh v Dahharan Singh. (1890) 14 Bom 317 (319), Babu v. Bhikai Sadashiv.

^{(1890) 14} Bom 317 (318), Babu v. Bhikaji Sadashiv. (1917) A 1 R 1917 Bom 11 (13): 42 Bom 69: 43 Ind Cas 233, Ganpali Bhatta

Neelmanes v. Ramkrishna Bhatta Shankar Bhatt. (1864) 1864 Sath W R Gap 83 (88), Mt. Parbutty Moflessa v. Mt. Rajoo, (1875) 24 Suth W R 66 (87n): 3 Bang L R A O 362, Radha Mohan Dhar v-

Ram Das Dey. (1867) 8 Suth W R 256 (257), Ram Dayal Gossain v. Kattyanee Debia,

^{(1869) 12} Suth W R 97 (98): 3 Beng L R A C 208, Ganga Charan Roy Chowdhury v. Jagarnath Dutt.

limitation and that therefore adverse possession against the female did not affect the reversioner's right to recover possession within twelve years of the death of the female.⁷ A contrary view was also

(1869) 12 Suth W R 413 (417]: 3 Beng L R A O 437, Tarsnes Churn Gangooly v. John Waison.

(1869) 11 Suth W R 289 (289), Chunder Nath Sein v. Anundmoyee Dossee.

(1869) 11 Suth W R 9 (10) . 2 Beng L R App 14, Copal Singh v. Kanhaya Lai Sahebzada

(1870) 4 Beng LR A G 136 (139), Raghishore Dutt Roy v. Girish Chandra Roy Choudhury.

(1587) 14 Cal 323 (344). Drobomous Curta v. Davis.

(1893) 2 Cal W N 162 (164), Mohema Chunder Roy Choudhury v. Cours Nath Dev Choudhury.

(1895) 23 Cal 460 (470), Sham Lal Metra v. Amarendro Nath Bose.

(1915) A I R 1915 Cal 629 (633): 27 Ind Cas 954, Mohendranath v. Mt. Shamsunnessa Khalun.

(1905) 3 Ind Cas 415 (416) (Cal), Abhoy Churn Ghose v. Attarmoni Dasses.

(1930) 13 Mad 512 (514, 515), Sambanea v. Rogara.

(1918) A I R 1918 Mad 659 (660): 42 Ind Cas 540, Venkairamanayya v. Dej-

(1918) AIR 1918 Mad 756 (757): 42 Ind Cas 228, Ramachandra v. Audemma, (1891) 1 Mad L Jour 392 (395), Ragata v Sambasita.

[See also (1897) 21 Bom 646 (670), Fundratan Das v. Cursondas.]

See also the following cases where it was held that title which was extinguished by afterise possession under Act 18 of 1839 could not be revived by the subservent passing of the Act of 1871:

(1899) 26 Cal 285 (295, 296), Braja Lal Sen v. Jeban Kreshna Roy.

(1890) 13 Mad 467 (470), Sankaran v. Persasamy,

(1894) 17 Mad 473 (475): 4 Mad L Jour 192, Ranga Rau v. Bhat ayammi, (1915) A I R 1915 Mad 637 (639): 27 Ind Cas 109, Venkoba Row v. Nataraja Chettiar.

(1911) 10 Ind Cas 477 (480): 33 AN 356: 38 Ind App 87 (PC), Khunni Lal v. Gobind Krishna Naram.

 (1925) A I R 1925 Oudh 729 (730): 87 Ind Cas 1021, Bhagwan Din v. Ajudhia.

(1892) 14 All 156 (159) : 1892 All W N 22 (F B), Ram Kalı v. Kedar Naih. (1901) 23 All 448 (453) : 1901 All W N 133, Amrst Dhar v. Bindesri Prasad,

(1903) 25 All 435 (439): 1903 All W N 93, Jhamman Kungar v. Tiloki. (1918) A I R 1918 All 15 (16): 41 All 154: 47 Ind Cas 222, Mt. Ganga v.

Kanha: Lal. (1923) A I R 1923 All 448 (448): 75 Ind Cas 614, Jagannath Singh v. Sardar

Singh. (1928) A I R 1928 All 561 (582): 51 All 188: 112 Ind Cas 801 (F B), Bankey Lal v. Rayhundih Sahoi.

(1929) A I R-1929 All 739 (740): 119 Ind Cas 855, Phul Chand v. Cobardhan

(1930) A I R 1930 All 807 (808): 120 Ind Cas 447, Kalı Pratap Missr v. Amla Pat Tewari

(1900) 2 Born L R 106 (107), Hathisingh v. Sats Lal.

(1902) 4 Bom L B 893, Jamnabhei v. Dharsey.
(1916) A I R 1916 Bom 68 (71): 41 Bom 315: 38 Ind Cas 552, Laxmipating v. Venlatek Tyrnal.

(1916) A I R 1916 Mad 709 (710 : 30 Ind Ind Cas 991, Shrinitasa Raya v. Ramappa Hebbara.

taken in some cases, namely that the principle of the Shiraganga casel would even now apply to cases of adverse possession against the

- (1917) A I R 1917 Bom 11 (13): 42 Bom 69: 43 Ind Cas 233, Ganpatibhatla Necimanes v. Rambrishna Bhatta Shanhar Bhatt.
- (1917) A I R 1917 Bom 15 (16): 44 Ind Cas 926, Ba: Jayagarrs v. Pursho-tamda: Sundar Lal.
 (1918) A I R 1918 Bom 142 (144): 42 Bom 714: 47 Ind Cas 153, Malkarjun
- v. Amrsia. (1923) A I R 1923 Bom 364 (365): 77 Ind Cas 479, Pandurung Wasudeo v.
- Basappa Shiddappa.
 (1893) 9 Cal 934 (937): 13 Cal L R 372 (F B), Sreenath Eur v. Prosunno
- Kumar Ghose. (1884) 10 Cal 1003 (1007): 9 Ind Jur 149, Ram Pershad Ghowdhury v.
- Jokhoo Roy. (1907) 6 Cal L Jour 490 (522). Roy Radha Kessen v. Nauralan Lal.
- (1929) A I R 1929 Cal 93 (95) : 114 Ind Cas 189, Siva Prasad v. Bhadramani
- (1930) A I R 1930 Cal 165 (167, 168) : 57 Cal 289 : 123 Ind Cas 414, Abmash Chandra Ghosh v. Narahari Mather.
- (1895) 1895 Pun Re No. 74. Saidulla v. Mt. Latla.
- (1903) 1903 Pun Re No. 41, Rulia v. Rulia.
- (1920) A I R 1920 Lah 500 (501): 68 Ind Cas 299, Nand Singh v. Dhankaur.
 (1923) A I R 1928 Lah 106 (107): 68 Ind Cas 177, Channan Singh v. Salig Ram.
- (1891) 15 Mad 6 (9, 10), Shankarn v. Kesayan
- (1903) 26 Mad 143 (147): 12 Mad L Jour 197, Sreeramulu v. Krislamma.
- (1869) 5 Mad H C R 428 (482), Alchamma v. Subba Rayudu.
- (1915) A I R 1915 Mad 217 (220, 221): 24 Ind Cas 519, Chattan Rajah v. Raman.
- (1915) A I R 1915 Mad 539 (540): 25 Ind Cas 692, Venhalarainam v. Venkaiaramiah.
- (1917) A I R 1917 Mad 43 (47): 37 Ind Cas 783, Neela Kanta Rao v. Narayanswamy Iyer.
- (1929) A I R 1929 Mad 421 (426): 119 Ind Cas 57, Ayysam: Iyer v. Mahadera
- (1900) 13 C P L R 81 (83), Rampershad Tewars v. Anandilal.
- (1914) A I R 1914 Nag 81 (81): 10 Nag L R 35: 23 Ind Cas 719, Sheo Lal v. Mt. Sheorajia.
- (1927) A I R 1927 Nag 104 (105): 22 Nag L R 175: 100 Ind Cas 446, Mt. Deshrani v. Kishore Singh.
- (1927) A I R 1927 Nag 226 (228): 101 Ind Cas 822, Deoram Gujar v. Biju Gujar.
- (1930) A I R 1930 Nag 204 (204): 27 Nag L R 1; 123 Ind Cas 906, Garpat v. Narayan (1923) A I R 1923 Oudh 31 (35): 68 Ind Cas 534, Mt. Parbati v. Muhammad
- Hads. (1925) A I R 1925 Ondh 164 (166): 78 Ind Cas 65, Mt. Raj Dulari v. Mt.
- Chandesar Des. (1928) A 1 R 1928 Oudh 155 (192): 108 Ind Cas 817, Abdul Halim v. Raja
- Saadat Air.

Uhaus.

^{(1911) 11} Ind Cas 981 (992) (All). Banndhar v. Lachmi Narain.

^{(1912) 14} Ind Cas 71 (72): 1912 Pun Re No. 52, Nur Ahmad v. Rahim Bahhah.

female, so that the Article can be applied subject to such principle.⁸ The conflict of opinion has now been set at rest by the decision of their Lordships of the Privy Council in Mt. Jaggo Bai v. Utsava Lal.⁸ where it has been held that, evcept where there has been a decree or other act in the law in the widow's lifetime depriving the reversionary heir of the right to possession on the widow's death, the heir is entitled to rely upon Article 141 for the purposes of determining the question whether the title is barred by lapse of time. In that case there had been adverse possession against a Hindu widow for over twelve years alter which she died and the suit was brought by the reversionary heir within twelve years of her death. Their Lordships observed as follows:

"The judgment of their Lordships' Board in the Shiraganga case established the principle of the representation of the inheritance by a Hindu widow. That case was decided during the currency of the Act of 1859. In Harmath Chattergee v. Mothurmohun.10 their Lordships' Board held that the effect el the Acts of 1871 and 1877 was not to except from the rule laid down in the Shivaganga decision, the case where a decree had been obtained against a Hindu widow in her liletime, founded upon the law of limitation. . . . It is therefore established by this decision that where a decise founded upon the law of limitation is obtained against the widow in her lifetime the reversionary heir is barred and does not get the henefit of Article 141. The question raised by the present case is whether the came result follows where there has been no decree, though at the death of the widow, a stranger has been in adverse possession for twelve years or more. In their Lordships' judgment where there has been no decree against the widow or other act in the law in the widow's liletime depriving the reversionary heir of the right to possession on the widow's death. the heir is entitled, after the widow's death, to rely upon Article 141 for the purpose of the determination of the question

^{(1912) 17} Ind Cas 186 (187) (Mad), Ponnsa Thirumalai Vanday Therar v.

Kandasamy Vendaya Therar. (1913) 18 Ind Cas 948 (948) (All), Sheo Chaudhars v Sadho Das.

^{(1913) 18} Ind Cas 959 (959) (All), Hardwar Ras v. Balaram Ras.

^{(1926) 95} Ind Cas 18 (19) (Nag), Mt Muha Bas v. Amru

 ⁽¹⁹²⁸⁾ A I R 1928 Cal 670 (674). 55 Cal 903. 112 Ind Cas 496, Aurabinda Nath Tagore v Manorama Deba.

^{(1930) 51} Cal L Jour 23 (24, 25), Radha Krishna Kulal v. Nil Kamal Kulal.
(1897) 19 All 357 (871). 1897 All W N 80, Hanuman Prazad Singh v. Bhagatati

^{(1898) 20} All 42 (46) . 1897 All W N 195, Tika Ram v. Shama Charan.

[[]See also (1929) A I R 1929 Ondh 133 (154) 115 Ind Cas 101 4 Luck 593, Mt Lachmus v. Ishurs Pressed.] 9. (1929) A I R 1929 P C 166 (170) - 56 Ind App 267 . 117 Ind Cas 498 51 All

^{439 (}P C). 10 (1893) 21 Cal 8 (18) 20 Ind App 183 . 17 Ind Jur 481 . 6 Sar 831 (P C).

Article 141 Notes . 13—14 whether the title is barred by Ispse of time. To hold otherwise, would, in their Lordships' opinion, in effect, compel the Court in determining a question within the scope of the Article to ignore the express words of the Article.

"But their Lordships are further of opinion that the point is already concluded by the judgment of their Board in Runchordas Vandravandas v. Parratibai". . . The case of Vaithilinga Muddliar v. Shrirengath Anni, "illustrates the application of the rule in the Shiraganga case," where a decree founded upon

Mudatar v. Shrirengath Ann.," Illustrates the application of the rule in the Shiragarga case, where a decree founded upon adverse possession has been obtained against a Hindu widow in her lifetime. The decision is not, in their Lordships judgment, in conflict with that in Runchordas Vandraurandas v. Parratibai, 13 in which no decree had been obtained against the widow, nor had there been any other act in the law in the lifetime of the widow destroying the heir's interest."

 The decision of the Privy Council has been followed in cases decided subsequently.¹⁴

14. Adverse possession against last male owner. — Where adverse possession commences to run against the last rate owner himself, the intervention of the limited estate will not prevent time running and will not enable the reversioner coming after the limited owner to say that he got a fresh cause of action on the death of the owner of the limited estate. In Mokendra Nath v. Shamsunnessa

11. (1899) 23 Bom 725 (786) ; 26 Ind App 71 : 1 Bom L R 607 : 8 Cal W N 621 : 7 Sar 543 (P C).

12. (1925) A I R 1925 P C 249 (251): 52 Ind App 822: 43 Mad 883: 92 Ind Cas 85 (P C).

13. (1999) 23 Bom 725 (736) : 26 Ind App 71 : 1 Bom L R 607 : 3 Cal W N 621 : 7 Sar 543 (P C).

 (1932) A I R 1937 Born 431 (133): 133 Ind Cas 23, Bai Manchha v. Tribhoran Lallabhai.
 (1931) A I R 1935 Cal 702 (703): 153 Ind Cas 1101: 63 Cal 155, Hernendra

(1935) A I R 1935 Cal 702 (703): 159 Ind Cas 1101: 63 Cal 155, Hernendra Nath Ray v. Janeardra Prasurva Bahaduri.

(1936) A.I. B. 1936 Cal. 31 (33): 160 Ind Cas 570, Mahendra Narayan Esry v. Debahun Esrijan Esr. (1933) A.I. B. 1935 Mad 661 (665): 157 Ind Cas 1100, Eurasyya v. Subba Eto.

(1937) A I B 1937 Born 458 (161): 172 Ind Cas 184 : I L B (1937) Born 206, Madireloppo v. Subbippi.

(1930) A I B 1930 Born 545 (552): 54 Born 837: 127 Ind Cas 897, Shankerbhai v. Bei She.

(1900) A I B 1930 Pat 573 (574): 9 Pat 634: 128 Ind Cas 131: Muni Lal v. Nath Sakay.

[See also (1933) A I P. 1933 Ordh 170 (177); S. Luck 538; 150 Ind Cas 346, Eajeshar Balev. Har Kushen Eals.]

Note 14

(1922) A I R 1922 Mal 59 (60): 45 Mal 370: 67 Ind Cas 245, Venam Barrays ov. Eusurau Ectarima.

(1922) A I B 1922 Mad 12 (15): 45 Mad 351: 70 Ind Cas GS, Seelaramaraju v. Subbaraju, Khatun,2 their Lordships of the Calcutta High Court observed as follows:

Article 141 Note 14

"It is plain that Article 141 applies only to eases where it is proved that the last full owner was in possession at the time of his death; if he himself was shipossessed and time hegan to run against him, the operation of the law of limitation would not he arrested by the fact that, on his death, he was succeeded by his widow, daughter or mother."

Where even excluding the period of intervention of the limited estate, the adverse possession has exceeded twelve years at the time of the suit, it is of course clear that the Article will not entitle the reversioner to sue for presession.³

- [1921] A I R 1921 Mad 272 (276): 68 Ind Cas 73i: 44 Mad 951, Narayana-swamy Naicher v. Perjasuny Odayar.
- (1910) 5 Ind Cas 640 (643) . 33 Mad 473, Tummajiamma Garu v. Subbaraju.
 (1929) A I R 1929 All 419 (420) : 116 Ind Cas 740, Jaideo Singh v. Dhoom Singh.
- (1923) A I R 1923 Bom 364 (303) . 77 Ind Cas 479, Pandurung Wasudeo v. Basapra Shiddapra
- (1930) A I R 1930 Born 545 (552) . 54 Born 837 . 127 Ind Cas 897, Shankar.
- bhai v. Bai Shit. (1868) 9 Suth W R 460 (460), Brinda Dabee Chordrain v. Peary Lall Chow-
- (1892) 19 Cal 629 (631), Mahabir Pershad Singh v. Hurrihur Pershad Narain Singh.
- (1904) 82 Cal 165 (168), Amrithalal Bagchi v Jatindra Nath.
- (1915) A I R 1915 Cal 629 (633) . 27 Ind Cas 954, Mohendra Nath Diswas v. Mt. Shamsunnessa Khatun.
- (1935) A I R 1935 Cal 702 (704) 63 Cal 155 159 Ind Cas 1101, Hemendra Nath v. Jnanendra Prasanna
- (1930) A I R 1930 Cal 474 (475). 128 Ind Cas 201, Bhushan Mondal v. Sarbeshyar Mondal.
- (1923) A I R 1923 Lah 106 (106) . 68 Ind Cas 177, Chaman Singh v. Salig Ram.
- (1924) A I R 1924 Lah 292 (292): 69 Ind Cas 893, Khilu Ram v. Bhrah Bai (Suit for possession by the daughter claiming as heir to her father after the death of her mother;)
- (1925) A I R 1925 Oudh 400 (401) 86 Ind Cas 725, Ram Narayan v. Barhand, (Question raised but not decided)
- (1925) A I R 1925 Oudh 729 (730) . 87 Ind Cas 1021, Bhagwan Din v. Ajudhia.
- (1925) A I R 1925 Pat 68 (87) 93 Ind Cas 454 (FB), Harthar Prasad v. Kesho Prasad
- (1926) A I R 1926 Pat 192 (194) 92 Ind Cas 177. 5 Pat 411, Mt. Batisa Kuer v Raja Ram Pandey
- (1867) 7 Suth W R 453 (454), Ram Doolab Sandyal v Ram Naram Motter.

 (Purchase by last full owner.—Neither he nor his widow in possession.—Suit by reversioner for possession.—Lamitation ran from death of widow!
- (1915) A I R 1915 Cal 629 (633)
 Ind Cas 954 (958).
- (1925) A I-R 1925 Oudh 400 (401) 86 Ind Cas 725, Ram Narayan v. Barkandi

Article 141 Note 15

15. Alienation or arrangement entered into by female.—An other interesting the second second

Note 15

- I. (1881) 8 Cal 224 (229): 8 Ind App 210: 4 Sar 294: 6 Ind Jur 108 (P C), Bib: Sahodhra v. Ras Jang Bahadur.
 - (1925) A I R 1925 P C 127 (129) 88 Ind Cas 343: 21 Nag L R 127 (P C), Harigir Kisangir v. Anand Bharathi.
 - (1897) 19 Ali 357 (371): 1897 Ali W N 80, Hanuman Pershad Singh v. Bhaguti Prasad.
 - (1901) 1901 All W N 62 (62, 63), Shahdal Chaudre v. Bhagwate Prasad.
 - (1878) 4 Cal 523 (526) * 3 Cal L R 391, Prosanna Nath Roy Chaudre v. Afzolonesisa Begum.
 - (1882) 8 Cal 442 (445, 446) 6 Ind Jnr 526, Pursut Koer v. Palut Roy.
 - (1883) 9 Cal 93 (95): 5 Shome L R 84, Goya Prasad v. Heet Narain.
 - (1882) 10 Cal L R 837 (845), Shee Narain Suigh v. Khurge Keerry. (Compromise regarded as alienation.)
 - (1925) A I R 1925 Nag 306 (309) : 21 Nag L R 62 : 89 Ind Cas 44, Wasudeo
 - v. Bhawa. (Do.) (1868) 10 Suth W R 276 (277), Suntokhee Thakoor v. Mt. Balases Koonwur.
 - (1869) 11 Suth W R 183 (184): 2 Beng L R App 39, Gopal Mullick v. Onoop Chunder Roy.
 - (1870) 13 Suth W R 52 (52, 54, 55): 5 Beng L R 585, Mt. Raj Koonwar v. Mt. Indurjit Kunwar.
 - (1879) 1879 Pun Re No. 15, Mt. Jas Dev. v. Shib Dayal.
 - (1882) 1882 Pun Re No. 15, Jawahir Singh v. Gusain Lal
 - (1898) 1898 Pun Re No. 29, Hira Singh v. Sher Singh.
 - (1898) 1898 Pun Re No. 79, Chiragha v. Mahtaba.
 - (1912) 1912 Fun L R No. 198, Kesho Das v. Nathu Mal.
 (1915) A I R 1915 Lab 353 (354): 27 Ind Cas 899, Hakam Singh v. Indar.
 - [Mutation of mames in favour of manager of widow's property.— Possession of manager is not adverse to next heir.]
 - (1918) A I R 1918 Mad 659 (660) . 42 Ind Cas 540, Venhatramanayya v. Dejappa Konde.
 - (1920) A I R 1920 Mad 601 (602) . 60 Ind Cas 635, Shunmuga Velayudam v. Koyappa Chettsar.
 (1925) A I R 1925 Nag 306 (809) : 21 Nag L R 62 . 89 Ind Cas 44, Wasudeo
 - v. Bhuca. (1919) A I R 1919 Oudh 213 (214): 22 Oudh Cas 156: 52 Ind Cas 845,
 - Achhaibar Singh v. Hargobind Singh. (1925) A I'R 1925 Oudh 164 (166) . 78 Ipd Cas 65, Mt. Raj. Dulars v. Mt. Chandesar Pes.

Rafialshm: v. Bhola Nath, a Hindu widow had, by a private agreement given up a portion of her estate to the defendant, and the reversioner sould for possession within twelve years of the widow's death. Their Lordships of the Privy Council observed "that possession under an agreement which was not hinding on the reversionary heirs, could not avail the Sens (i. e. the defendants) in a question with a reversionary heir, whose night to possess could not arise until the succession opened to such her."

15a. Limited owner setting up full title. — The possession of a limited female owner is not adverse to the reversioner. Nor can she set up adverse title to herself or do anything prejudicial to the interests of the reversionary heirs of her husband. She cannot

- (1933) A I R 1933 Oudh 170 (172) : 8 Luck 539 : 150 Ind Cas \$46, Rajeshar Bals v. Har Kishen Bals.
- (1923) A I R 1923 Pat 72 (74) 68 Ind Cas 601 . 2 Pat 75, Abdur Rahman v. Wals Mohammad.
- (1911) 10 Ind Cas 337 (389) 1911 Pen Re No 32, Khaire Khan v. Ghulam Ghause
- (1921) 63 Ind Cas 887 (899) (Cal), Sarat Chandra v. Satindra Mohan. (Possession of third person with widow's permission.)
- (1900) 1900 Pun Re No. 53: 1900 Pun L R No. 391, Bhaguan Singh v. Khushala (Do.)
- (1869) 12 Suth W R 231 (235), Decranel Koowar v. Mt. Indurject Koowar.
- (1872) 18 Suth W R 1 (3) . 2 Suther 581 (P C), Sheroccomares Debia v. Keshub Chunder (Do)
- (1910) 7 Ind Cas 530 (593) (Mad), Eman: Subbrah v. Venkata Lahshmipathi (Do)
- (1927) 99 Ind Cas 996 (996) (Lah), Ghulam Rasul v. Kamır (Do.)
- 2. (1938) A I R 1939 P O 254 (256) . 177 Ind Cas 1 (P C).

Note 15a

- (1919) A I R 1919 Oudh 258 (259) . 53 Ind Cas 761 · 22 Oudh Cas 260, Basj Nath v. Sheoraj Singh.
- (1928) A I R 1928 Oudh 411 (414) 112 Ind Cas 266, Dec Datt v. Baj Bals. (1902) 30 Cal 303 (808) . 30 Ind App 41 5 Bom L R 6 7 Cal W N 225 8
 - (1902) 30 Cal 303 (303). 30 Ind App 41 5 Bom L R 6 7 Gal W N 225 8 Sar 409 (P C), Ram Anugra Naram Singh v. Ghoudhurs Hanuman Sahas.
 - (1930) A I R 1930 All \$41 (\$44) . 126 Ind Gas 345, Mt Bhagsean Des v. Shib Singh.
 - (1927) A I R 1927 All 767 (770): 49 All 779: 102 Ind Cas 167, Jaules v. Gendan Singh.
 - (1927) A I R 1927 All 799 (801) · 103 Ind Cas 814 . 50 All 89, Ram Surat Singh v. Badrs Norain
 - (1910) 7 Ind Cas 218 (222) (Cal), Sheolal Singh v Goor Narain
 - (1928) A I R 1928 Oudh 67 (81): 109 Ind Cas 835, Md Ali Khan v Nisar Ali Khan.
 - (1929) A I R 1929 Oudh 153 (154). 115 Ind Cas 101 4 Luck 592, Mt. Lachman v. Ishurs Prasad.

Articls 141 Notss 15—15a Article 141 Notes acquire full title to the property by the assertion of such right, and the reversioner would be entitled, nevertheless, to sue for possession within the time limited by this Article.²

16. Suit involving declaration as to adoption by Hindu femalo.—Where a Hindu widow makes an adoption which is not valid, the reversioner is entitled to bring a suit to obtain a declaration that the alleged adoption is invalid or never in fact took place. Such a suit would be governed by Article 118 ante which prescribes a period of six years from the date when the alleged adoption becomes known to the plaintiff. Before the decision of the Privy Council in Kalyandappa v. Ohenbasappa, there was a difference of opinion on the question whether a suit by a reversioner for possession after the widow's death, involving the decision of an issue as to the invalidity of an adoption of the defendant alleged to have been made by the widow, would be governed by Article 118 or by this Article. The Higb Courts of Allahabad, Calcutta, Madras and Patna and the

(1929) A I R 1929 Oudh 215 (219): 115 Ind Cas 279, Chandra Shekar Singh, v. Jagjiran Bakhsh Singh.

(1922) 70 Ind Cas 39 (42) (Pesh), Ranran v. Zar Gul.

[See also (1981) 1881 Pun Re No. 83 at page 622, Mt. Anand Koer v. Sodt Narindar Singh.

(1929) A I R 1929 Oudh 494 (518): 119 Ind Cas 687: 5 Luck 305, Nistr Ali Khan v. Md. Ali Khan. (1930) A I R 1930 All 109 (110). 121 Ind Cas 701: 52 All 222, Dhur-

jati v. Ram Bharos. (1911) 9 Ind Cas 146 (147) (All), Sri Chand v. Surj Koer.]

 (1936) A I R 1936 Pesh 125 (136): 163 Ind Cas 64, Ghulam Daud Khan v. Habibullah Khan.

Note 16

1. (1924) . ~

79 Ind Cas P C), 13 Ind and 64 Cal

829 (P C), Referred to)

(1886) 8 All 644 (645) : 1886 All W N 232, Basdeo v. Gopal.

(1895) 17 All 167 (171) : 1895 All W N 36, Nathu Singh v. Gulab Singh. (1923) A I R 1923 All 25 (27) : 45 All 1 : 75 Ind Cas 14, Mt. Radha Dulanya v. Rashik Lal.

(1925) A I R 1925 All 79 (80): 46 All 637: 87 Ind Cas 938, Shib Deo Misra v. Ramprasod.

3 (1869) 12 Suth W R 14 (16): 4 Beng L R 3 (F B), Sreenath Gangooly v. Mohesh Chunder Roy.

(1887) 14 Cal 401 (417), Lalo Parbhu Lal v. J Mylne.

(1910) 7 Ind Cas 427 (483) (Cal), Bhagbat Pershad v. Murar: Lal.

(1897) 25 Oal 354 (364, 365), Jagannath Pravad Gupta v. Ranjit Singh. (1900) 27 Oal 242 (254) : 4 Cal W N 405, Ram Chandra Mukerjes v. Ranjit.

(1903) 9 Cal W N 222 (224), Barkanta Chandra Roy v. Kali Charan Roy. 4. (1907) 80 Mad 303 (310) · 2 Mad Li Tim 178 : 17 Mad L Jour 182, Velaga

5. (1920) A I R 1920 Pat 291 (820, 321) : 45 Ind Cas 929, Sah Deo Naram v. Kusum Kumari.

Article 141 Note 16

Judicial Commissioner's Court of Nagour's held that the roversioner was entitled to bring his suit for possession within twelve years of the death of the widow, notwithstanding he did not file any suit for a declaration as to the invalidity of an adoption alleged to have been made by the widow. The High Court of Bombay beld a contrary view in some cases6 which however were everyled in a later Full Bench decision of the same Court. The nutborities were conflicting in the Punjab " The decision in Kalyandappa's case has now set the conflict at rest. In that case A died leaving his widow B. B adopted C, C died leaving his widow D. After D's death X, the reversioner, filed a suit for possession within twelve years of D's death. The defendant Y contended that he had been adopted by B and not C, that such adoption was more than six years before suit to the knowledge of the plaintiff and that therefore the suit was harred by Article 118 and was not governed by this Article. Their Lordships after an exhaustive review of all the authorities negatived that contention and observed as follows:

"The words 'a suit to obtain a declaration' are terms of art. They relate back to the Specific Relief Act passed in the same year 1877, being Act No 1 of that year, whereas the Limitation Act is Act No 15. Section 42 of the Specific Relief Act deals with declaratory decrees and the illustration (letter f) is much in point.

"It is to this class of suit that this particular limitation applies. Tho date from which timo begins to run is a subjective or a personal date; and the condition of obtaining a particular relief which is sought in a declaratory suit is that the plaintiff should not be guilty of lacbes, the measure of lacbes boing fixed by the statute as six years. But, if a claimant chooses to run the risk that an adoption which he has not attacked will have overy presumption made in its favour by reson of its long standing, he can wait till bis reversionary right bas accrued and even till the limit (no doubt a very wide limit) of twelve years from that accruer has passed."

The view was confirmed by the Privy Council in the undermentioned case.

⁵a See the cases cited in Foot note 15 of Note 2 to Article 118.

^{6. (1899) 24} Bom 260 (285) 1 Bom L R 799 (F B), Shrinwas Murar v. Hanmant.

^{(1913) 20} Ind Cas 162 (169) · 37 Dom 513, Shrinias Sarjerao v. Baliant Venhalesh.

^{(1900) 25} Bom 26 (80) 2 Bom L R 495, Barot Naran v. Barot Jesang.

 ⁽¹⁹²²⁾ A I R 1922 Bom 223 (231, 232) - 46 Bom 776 . 67 Ind Cas 184 (F B), Doddawa v Yellau a Mallappa Beni.

^{8.} See Note 2 to Article 118 ante

 ⁽¹⁹³¹⁾ A I R 1931 P C S4 (S5) · 131 Ind Cas 758, Padmalav Acharya.v. Fakira Debya

Article 141 Notes 16—18 See also Note 2 to Article 118 ante for a fuller discussion.

- The principle of the decision in Kalyandappa's case! applies equally to a suit which involves the affirmation of the fact of adoption. Where a Hindu widow adopted B but it was agreed that the widow was to be in possession until her death, and after ber death B sued for possession, it was held that this Article governed the case and not Article 119 ante, even though the defendants denied the adoption which had therefore to be affirmed helore possession could be given to the plaintiff. 10
- 47. Suit for possession on ground of mistake. A, a Hindu widow, died and B and C, the reversionary heirs, succeeded to the estate. They were entitled to equal shares, but under a mistake of law as to whether the parties took their share per capita or per starpes, they took unequal shares. On discovery of the mistake, but within twelve years of the death of the widow, B who had got the emaller share sued C for possession of the portion necessary to equalise the share. It was held by the Judicial Commissioner's Court of Naggur that the euit was not governed by Article 96 bit by this Article. As has been seen in Note 2 to Article 96, it-applies only when the plaintiff cannot succeed without proving the mistake, and not to cases where the plaintiff snee on an existing title, though he alleges a mistake also. In the case cited above, B clearly had title to an unequal molety of the property though, as a reason for his not taking such share he alleged a mistake of law.
- 48. Suit for redemption of mortgage made by last male owner where mortgage has, during widow's lifetime, transferred it to third party. -A, a male owner of property, mortgages the same to M with possession and subsequently dies leaving a widow B. During the lifetime of B, M transfers the property to M absolutely, C, the reversionary here of A, after B, files a suit for redemption and possession, more than twelve years after the transfer by M to M, that within twelve years of the death of B. It has been held by the High Court of Madtas in the undermentioned case' that the suit is not governed by this Article but by Article 134 and that the suit, though for redemption, is barred under that Article. As has been seen in Note 6 ante, this Article will have no application

Note 17

1. (1920) A I R 1920 Nag 106 (108) : 55 Ind Can 422, Wasudso v. Vathal.

Note 18

 (1021) A I R 1921 Mad 272 (275): 44 Mad 951: 68 Ind Cas 734, Narayanaswamy Naucher v. Perusamy Olayar.

 ⁽¹⁹³⁴⁾ A I R 1934 Bom 110 (112): 58 Bom 280 149 Ind Cas 674, Bhagi-rathibar v. Appa Dada. (The view, however, that Article 141 applies even where the widow is in possession under an agreement is not correct. See Nota 4 and 1)

if it is a suit for redemption of a valid martgage by A, the reason being that C is not entitled in such a case to the possession of the property solely by reason of the death of the female owner. But the Article 141 does not apply because Article 134 applies does not seem to be correct on principle. If both Articles 134 and 141 are assumed to apply to a suit for redemption under the circumstances noted above, it is submitted that Article 134 should not be preferred inasmuch as the doing so on the facts of the particular case would be to ignore the fundamental principle of the law of limitation that prescription does not run against a person who is unable to act. See Note 2 ante. The proper Article applicable to the case would, it is

- reasoning of the High Court of Madras in the above decision that submitted, be Article 148, neither Article 134 nor Article 141 being applicable.
- 19. Section 6 and this Article. Where at the death of a limited female owner the reversionary heir entitled to possession happens to be under a disability such as is contemplated by Section 6 of the Act, time will not begin to run until the disability ceases. (See Note 19 to Section 6 ante.) It is also clear that where time has once begun to run against a reversioner on the death of a limited female owner, it cannot stop and the subsequent disability of the representative of the reversioner does not affect the running of time.1
- A, a Hindu widow, made an alienation and subsequently made adoption of a minor. The minor died during minority and A succeeded him as heir. Subsequent to her death, but long after adoption the reversioner sued for possession of the property alienated by tho widow. It was held in the undermentioned case² that the cause of action for the suit arose in favour of the adopted son on the date of adoption and as, on that date he was a minor, be was not bound to sue until after majority, as he died before he attained majority, and as against A there was no adverse possession, time for the reversioner began to run only on the widow's death. It is submitted that the decision does not seem to be correct on principle. It has been seen in Note 32 to Section 6 aute that that Section does not mevent the running of time against a person under disability. It would follow that not withstanding that the adopted son was a minor on the date of adoption, time will begin to run against him in favour of the alience and such running of time would not stop by reason of his minority. Nor would the reversionary heir get a fresh cause of action against the alience other than that which the adopted son himself had. The intervention of the limited estate would not prevent the suit from being barred.

Note 19

Article 141 Notes 18--19

^{1 (1927)} A I R 1927 All 818 (820) 50 All 152 - 107 Ind Cas 45, Rup Kithore v.

^{2. (1931)} A I R 1931 Mad 273 (274) . 129 Ind Cas 460, Venkatanaranmazza v. Rajya Lakshammama.

Article 141 Notes 20 - 21

20. Onus of proof. - In a suit governed by this Article the plaintiff must prove firstly that he is the nearest reversioner,1 and secondly that the female died within twelve years of the suit when such fact is not admitted or the defence is one of limitation.2 In the undermentioned case^{2a} a contrary view has been expressed, namely that in view of Section 108 of the Evidence Act it is for the defendant to show that the female died hevond the period of limitation. It is submitted that this view is not correct.

Where the reversioner files a suit prima facie within twelve years of the death of the female on whose death he is entitled to possession, but the defendant pleads that the last full owner himself had been dispossessed and time ran from that date, it is for the defendant to establish bis allegations.3

21. Starting point. - Time, under this Article, runs from the death of the female. It is then that the property vests in the

Note 20

- 1. (1928) A I R 1928 Oudh 155 (192) : 108 Ind Cas 817. Abdul Halim Khan v. Saadat Ali Khan.
- 2. (1924) A I R 1924 P C 136 (136) (P C), Rambrishna Rao v. Sriramulu.
 - (1916) A I R 1916 Bom 300 (302): 40 Bom 239: 33 Ind Cas 484. Jayawant Javanrao v. Ramchandra Narayan.
 - (1869) 11 Suth W R 173 (174), Kalee Nath Taloohdar v. Joy Doorga Dossia.
 - (1904) 14 Mad L Jour 464 (465), Venkala Hanumanulu v. Lachchamma. (1924) A I R 1924 Mad 838 (839) : 82 Ind Cas 584, Rajagonalachariar v.
 - Bashnacharsar. (1916) A I R 1916 Nag 34 (35) : 18 Nag L R 16 : 39 Ind Cas 21, Parson v.
 - Munnalal. (1927) A I R 1927 Nag 104 (107) : 22 Nag L R 175 : 100 Ind Cas 446. Mr.
- Deshrant V. Kashore Sangh. 2a (1920) A I R 1920 Lah 191 (192) ; I Lah 554; 56 Ind Cas 742, Tans v. Rilhi
- 3. (1935) A I R 1935 Cal 702 (704): 159 Ind Cas 1101, Hamendra Nath v. Inanendra Prasanna.

Note 21

- 1. (1881) 8 Cal 442 (445, 446) : 6 Ind Jnr 526, Pursut Koer v. Palut Roy.
- (1914) A I R 1914 P C SS (40, 41) : 36 All 187 : 23 Ind Cas 715 (P C), Lala Brij Lal v. Mt. Inda Kunwar.
 - (1897) 21 Bom 376 (379), Hardal v. Bas Rewa.

Kumar.

- (1897) 21 Bom 646 (670), Vundravandas v. Curson Das.
- (1923) A I R 1923 Bom 364 (365) : 77 Ind Cas 479, Pandurung v. Basarna.
- (1882) 9 Cal 93 (95) : 5 Shome L R 84, Gaya Pershad v. Heet Naram.
- (1867) 7 Suth W R 450 (451), Telluck Roy v. Phooliman Roy. (1871) 15 Suth W R 41 (42): 14 Moo Ind App 67: 7 Beng L R 216. 2 Suther
- 422 : 2 Sar 666 (P C), Rajendra Nath v. Jagendra Nath. (1918) A I R 1918 Lah 288 (289) : 46 Ind Cas 565, Khan Bahadur v. Ibra-
- him Khan. (1934) A I R 1934 Lah 633 (636): 152 Ind Cas 773, Khem Chand v. Krishan

reversioner.2 Time runs from the death of the female, not only Article 141 against the nearest reversioner but against all reversioners near or remete. The remote reversioner does not get any fresh cause of action after the expiry of twelve years from the death of the

Note 21

Where there are more females than one inheriting the monerty of the last male owner jointly, the words "wheo the female dies" in the third column of the Article most be taken to mean "after the death of all the female co-heirs "4 Where there are successive female owners, time will run against the reversioner from the death of the last female owner.4a

Where A and B, co-widows, succeed to X, a male owner, and A thereafter surrenders her interest to B but dies before A, the reversioner's right nevertheless comes ioto existence only on the death of A and time begins to run from that date. He does not get a right

- (1897) 20 Mad 493 (491) . 7 Mad L Jour 201, Venkataramaya v. Venkatalahshamma.
- (1918) A I R 1918 Oudh 32 (54) , 44 Ind Can 368 : 21 Oudh Can 1, Busheshar Bahsh v. Rameshar Bahsh.
- (1936) A 1 R 1936 Oudh 310 (361) . 163 Ind Cas 770. Mata Bakhsh v. A10dhiya Bakhih,
- (1909) 3 Ind Cas 536 (536, 537) (All), Nanak v. Sibba.
- (1910) 5 Ind Cas 964 (965) : 34 Bom 321, Ravje Mahadu v. Sakuje Kaloge.
- (1912) 12 Ind Cas 453 (455) . 1912 Pun Re No. 6, Mansaram v. Behars. (1922) 65 Ind Cas 224 (230) (Pat), Abdul Rahman v. Wals Muhammad.
- 2, (1915) A I R 1915 Nag 109 (110) : 11 Nag L R 116 . 31 Ind Cas 290, Kashirao v. Uharda.
- 3. (1902) 4 Pom L R 693. Jamnabas v Dharsey.

widow.3

- (1930) A I R 1930 Lah 211 (212) . 121 Ind Cas 70, Amarnath v. Mt. Ralli.
- 4. (1909) 4 Ind Cas 457 (459) 31 All 557 36 Ind App 210: 13 Outh Cas 183 (P C), Muhammad Kanul v. Imitar Falima
 - (1921) A 1 R 1921 Mad 246 (247) . 60 Ind Cas 135 . 43 Mad 855, Muthiala Ghengappa v. Budia Gunta.
 - (1905) 27 All 494 (498) . 1905 All W N 68, Ram Des Kunwar v. Abu Jafar. (1894) 18 Bom 216 (220), Mukta v Dada
 - (1874) 23 Suth W R 125 (126), Gobind Chunder Majoomdar v, Dulmeer Khan,
 - (1920) A 1 R 1920 Lah 500 (501) 68 Ind Cas 299, Nand Singh v. Mt. Dhan Kaur.
 - (1911) 9 Ind Cas 50 (51) 33 All 312, Gazadhar Pande v. Parbati. (See also (1923) A I R 1923 Mad 108 (109) . 70 Ind Cas 446, Ranganoths Rac v Rama Pandither 1
- 43 (1885) II Cal 791 (791). Kohilmons Dassia v. Manich Chandra.
 - (1895) 23 Cal 460 (470), Sham Lall Mura v. Amarendra Nath.
 - (1912) 1912 Pun W R (N. W. F. P Civil) No I (at pages 5, 6), Kesho Das v. Nathu Mal
 - (1921) A I R 1921 Mad 24 (26) . 44 Mad 131 · 60 Ind Cas 583, Ivatury Atchamma v Papmah.
 - (1923) A I R 1923 Mad 168 (169) . 63 Ind Cas 389, Joga Ferrayya v. Makina Sallyya Patrudu.
 - (1905) 3 Nag L R 35 (40), Anand Rao v. Bansmath Brahman.
 - (1937) 20 Nag L Jour 278 (280), Parashram v. Balakrishna.

Articls 141 Notes 21—22

to the interest of the surrendering widow on the death of B. There can be no acceleration of the estate of the reversioner by transactions between the co-widows without the knowledge and consent of the reversioners ⁵ But where A and B inherited jointly certain property and A forfeits her interest in favour of B by reason of unchastity, and B thereafter gets the whole estate, the reversioners' cause of action will arise on the death of B even though A survives B.

A, a reversioner, filed a suit against the alience from the widow within twelve years of her death making the other co-reversioners defendants The latter filed n written statement beyond twelve years of the widow's death claiming their share of the estate. It was held that they were not barred from doing so.?

During the lifetime of a Hindu widow, A alleging himself to be a reversioner filed a suit for declaration that an alteration by the widow was not valid. The suit was dismissed on the ground that A was not the reversioner, but B. Subsequently, after the death of the widow, B filed the suit as the reversioner for possession but that suit was dismissed also on the ground that he was not the reversioner. This was in the year 1916. A's son thereupon sued for possession more than twelve years after the death of the widow hut within twelve years of 1916. It was held that time ran from the death of the widow and, under Section 9 of the Act it did not stop running by reason of subsequent events such as the pendency of, or the decision in B's suit.

22. Local and special law.—Under Section 29 ante, this Article will not apply evon if the case is one falling within its purnew, where a special period of lumitation has been prescribed therefor by any special or local law.¹

Nots 22

 ⁽¹⁹²¹⁾ A I R 1921 Mad 246 (247): 43 Mad 855: 60 Ind Cas 135, Muthiala Chengappa v. Budragunta.

 ⁽¹⁹¹⁷⁾ A I R 1917 Lah 435 (435): 39 Ind Cas 204, Ghulam Sarwar v. Karam Ilahi d Co.

 ⁽¹⁹²⁹⁾ A I R 1929 Bom 345 (347): 53 Bom 472: 119 Ind Cas 656, Rayegavada v Ramalungapea.

^{(1909) 4} Ind Cas 249 (252) . 34 Bom 91, Narasımha Krishnaji v. Vaman Venhalesh Deshpande

 ⁽¹⁹²³⁾ A I R 1923 Mad 108 (109): 70 Ind Cas 446, Ranganatha Rao v. Rama Pandithar.

142.* For possession Twelve years. The date of of immoveable property when the plaintiff, while in possession of the property, has been dispossessed or has discontinued the possession.

the dispos-

144.† For pos-|Twelveyears.|When the possession of immoveable property or any interest therein not hereby otherwise specially provided for.

session of the dofondant becomes ad-verse to the Article 144

Article 142

Sunopsis

Articles 142 and 144

- Legislative changes.
- 2. Scope of Articles 142 and 144,
- 3. Suit must be for possession,
- 4. Suit on possessory title.
- 5. Suit on proprietary title.
- "Immoveable property."
- 7. Interest in immovable property.
- 8. "Plaintiff" in Article 142, meaning of.

Act of 1877, Article 142

Same as above. Act of 1871, Article 143 Same as above.

Act of 1859 No corresponding provision.

Act of 1877, Article 144 Same as above.

Act of 1871, Article 145 Columns 1 and 2-Same as atove.

Column 3 ran as follows "When the possession of the defendant, or of some person through whom he claims, became adverse to the plaintiff."

Act of 1859, Section 1, Clause 12

To suits for the recovery of immoveable property or Limitation of tuelte years Suits of any interest in immoveable property to which no other for immoveable pro- provision of this Act applies — The period of twelve years from the time the cause of action arose. perty.

Lam. 125

- "Has been dispossessed or has discontinued the possession."
- Defendant must be in possession at the date of suit.
- 11. "Possession," what is.
 - 12. Possession of part, if possession of whole.
 - Possession of honse is possession of site.
 Plaintiff only in constructive possession Dispossession or discontinuance of possession.
- 15. Principle that possession follows title.
- 16. Adverse possession, what is.
- 16. Adverse possession, what i
 - 18. Possession is not adverse if it can be referred to a lawful title.
 - 19. Possession of Hindu female.
 - Possession under a temporary arrangement between members of a family.
 - 21. Possession in lieu of dower.
 - 22. Possession in lieu of maintenance.
 - Possession by the bolder of a life estate, if can be adverse to reversioners.
 - Possession of property belonging to person under disability.
 Possession of insolvent.
 - 26. Possession of mortgagor, when becomes ad-
 - verse to the mortgagee.

 27. Possession of a co-mortgagor who redeems
 the mortgagee.
 - 28. Possession of mortgagee.
 - Possession of mortgagee under invalid foreclosure proceedings.
 - Possession of mortgagee under mortgage providing that on default the
 - mortgages should be full owner.

 31. Possession of mortgagee after purchase
 - in contravention of Order 34 Rule 14 of the Civil Procedure Code. 32. Possession of person entering under
 - void mortgage.

 33. Possession by the mortgagee, after redemption, of accessions to mortgaged
 - property.
 34. Possession of co-mortgagee paying off other co-mortgagees.

Arts. 142 & 144

35. Possession of co-owners - General.

36. Possession of alience from co-owner.

37. Possession of licensee from co-owner.

38. Effect of partition among co-owners.

39. Co-owner deriving possession from a third party claiming adversely against all the co-owners.

40. Adverse possession against alience of share in property.

41. Adverse possession by co-owners against stranger.

42. Abandonment by co-owner.

43. Relinquishment by co-owner.

44. Co-heirs.

45. Suit for possession by one co.owner against another - Article applicable,

46. Adverse possession of trust property by trustee.

47. Adverse possession of alience from trustee.

48. Adverse possession of right to perform worship in temple.

49. Adverse possession of property of Hindu. Muhammadan or Buddhist religious endowments.

50. Possession of co-trustees after division among them.

51. Possession of alience from co-trustee.

52. Acts referable to exercise of easement.

52a. Adverse possession-Vendor and vendee. 52b. Possession held under mistake, if can be adverse.

Possession of wrong-doer must be actual.

54. Adverse possession of surface and of subsoil rights in the land.

55. Possession of person who could not advance a hostile title.

56. Permissive possession.

57. Possession of agents, servants, etc.

58. Possession by husband or wife.

59. Possession of tenant.

59a. Encroachment by tenant. 60. Possession under invalid transaction.

> 60a. Possession under transfer which subsequently becomes invalid.

61. Adverse possession of inalienable property.

Arts, 142 & 144

.

possession of land in military 61a. Adverse cantonments. 61h. Adverse possession of rights not recognized hy

law. 62. Possession of owner, if can he adverse to himself.

63. Possession must be continuous for the statutory period.

64. Break in adverse possession, effect of.

65. Delivery of symbolical possession, if interrupts ndvsrss possession.

66. Decree does not interrupt adverse possession. 67. Effect of attachment on adverse possession.

68. Decision of Revenue Officer or Court regarding

houndary, if interrupts adverse possession. 69. Subsequent assertion of a different title hy defendant, if affects his adverse possession.

Submerged land. 71. Receiver and adverse possession.

72. Ahandonment of posssssion.

73. Confiscation and re-grant.

74. Revenue sale - Adverse possession against purchaser.

75. Dispossession of wrong dosr by another, If interrupts adverss possession.

76. Possession must be open.

77. Adverss possession against minor or Innatic. 78. Possession is not adverse to person not having

a present right to possession. 79. Adverse possession against holder of lifsestate.

80. Adverse possession of trust property hy stranger.

81. Adverse possession against one co-trustee, if adverse to the other.

82. Adverse possession against co-owners.

83. Adverse possession against widow is not

adverse ngainst subsequently adopted son. 84. Adverse possession against mortgagor, if ad-

verse against mortgagee. 85. Adverse possession against mortgagee, if

adverse to mortgagor.

86. Adverse possession against tenant, if adverse against landlord.

87. Onus of proof.

88. Judgment against third party does not alter onus. 89. Question immaterial when evidence has been let in on both sides.

Arts, 142 & 144

90. Starting point.

91. Defendant made party after limitation.

92. Tacking.

93. Effect of adverse possession.

- 94. Adverse possessor can get only what quandum owner had.
- 95. Adverse possessor gets a title only to the interest he purports to prescribe for.
- 96. Evidence of adverse possession.
- 97. Plea of adverse possession.
- Question of adverse possession, if one of law or fact.
- Adverse possession by or against Crown.
 Adverse possession by or against the public.

100. Special or local law.

Other Topics

Actual knowledge on part of owner not necessary ... See Note 76, Piz. 2 to 4
Adverse possession by successive tirrepassers ... See Note 92, Piz. 10 to 13
Agent—Reputation of agency—Desentials ... See Note 57, Piz. 11 to 13
Alternate pleas ... See Note 97, Pi. 9
Article 149—Saut under—Mere proof of plaintiff's title—Electron

Article 142—Whether immted to sunts on posser sory tutha... See Note 87, Pts. 10 to 13
Article 141 is residuary Article
See Note 2, Pt. 5 to 5
Article 144 is residuary Article
See Note 2, Pt. 1
See Note 2, Pt. 1
Supposes

Immovable property—What are—Instances ... See Note 6, Pts. 2 to 11
Immovable property—What are not—Instances See Note 6, Pts. 12 to 18

Mere non-payment of rent by tenant cannot create adverse possession . See Note 59, Pt. 5

Onus in cases falling under Article 142 See Note 87, Pts. 4 to 14
Onus in cases falling under Article 141 See Note 87, Pts. 15 to 192
Owner dispossessed getting back possession but again dispossessed — Time

runs from second dispossession See Note 90, Pts. 3, 4
Possession adverse at start—It cannot become permissive by authosquent events...
See Note 56, Pt. 14
See Note 56, Pt. 14

Possession asked as consequence of primary rehef.—Article 142 or Article 144 does not apply
... See Note 3, Pts. 6 to 8
Possession obtained by plaintif under decree of Court.—Decree reversed

and plaintiff dispossessed—Whether such dispossession gives cause of netion against defendant previously in possession. See Note 90, Pts. 5 to 11 Possession of independent trespassers cannot be tacked. See Note 92, Pt. 2

Possession of mortgages after discharge—Whether adverse

See Note 23, Pts 7a to 7d

Possession of person dispossessing usufructuary mortgages—Whether adverse

to mortgagor

Possession permissive—Article 14# applies

See Note 25, Pts. 2 to 4, 10

See Note 27, Pt. 5, Note 55, Pt 15

See Note 28, Pt. 9

See Note 27, Pt. 9

Note 1

Arts. 142 & 144 Possession under title cannot be tacked to possession without title ... See Note 92 F-N 6 See Note 60, Pts. 14 to 16 Possession under void transfer ...

See Note 60, Pts. 12, 13 Possession under voidable transfer ... Sale of equity of redemption to mortgagee void or voidable-Possession of mortgagee-Whether adverse Sec Note 28, Pts, 7e to 10 Space above land of owner - Whether immovable property

See Note 6, Pts, 19, 20 Submerged land-Owner presumed to be in possession; See Note 15, Pts. 21 to 23; Note 70, Pts. 5, 6

Submergence will operate as interruption of adverse possession See Note 70, Pts. 7, 9

Suit for declaration of title-Onus... See Note 87, Pts 20 to 25 Suit for possession-Possession need not be actual physical possession See Note 3, Pt. 18 Suit on more title - Failure to prove title-Whether plaintiff can succeed

See Note 97, Pts. 1 to 4a on ground of title by adverse possession ... Suit on possessory title - Not harred by Section 9, Specific Relief Act See Note 4 F-N 7

Tacking - Possession of two or more persons-Character of possession of the different persons - Whether should be same ... See Note 92, Pts. 6a to 9 ... See Note 57, Pt. 15 Trespass by agent, servant, etc ... Void leaso.— Tenant disposeessed by third party—Such person's possession
See Note 86, Pt. 9

Waste or jungle lands - Presumption as to possession ... See Note 15, Pts. 11 to 16a, 24

 Legislative changes.—Before the Act of 1859, limitation for suits for the recovery of immovable property was provided for by certain Regulations in force in the several Provinces. In the Provinces of Bengal and Bihar, the Courts were, under Regulations III of 1793 and VII of 1795, "prohibited hearing, trying, or determining the merits of any suit whatever against any person or persons if the cause of action shall have arisen twelve years before any suit shall have been commenced on account of it."1a By Regulation II of 1805 it was provided that the limitation of twelve years prescribed by the two previous Regulations should not apply if the person in possession of the property claimed in the suit had acquired the possession "by violence, fraud, or by an unjust dishonest means whatever."1

In the Province of Bombay, Regulation V of 1827 provided for such suits a limitation of thirty years But "it shall be a sufficient answer to the plea of possession for more than thirty years, that the

Articles 142 & 144 — Note 1

- 13 (1866) 6 Suth W R 296 (296). Muddun Mohan Tewaree v. Joy Koomaree Bibee. 1. (1858) 7 Moo Ind App 238 (253, 254, 259) : 1 Sar 633 (P C), Rajah Enayat
 - Hossein v. Sayud Ahmed Reza.
 - (1866) 5 Suth W R P C 95 (98) (P C), Lall Dolul Singh v. Lall Rooder

Notes 1-2

person in possession as proprietor, or any of the persons by whom Arts, 142 & 144 he derives his right, acquired such possession by fraudulent means. on proof whereof, a suit may be entertained at any period within sixty years, proyided that if such property had been held for more than thirty years by a person or persons bona fide believing his or their title as proprietors to be good, such title shall not be affected by the fraud of a former possessor "

Madras Regulation II of 1803, which applied to the Province of Madras, contained a provision similar to that provided for by the Bengal Regulation III of 1793 referred to above.

Under the Limitation Act of 1859, a suit for recovery of immovable property was governed by clause 12 of Section 1 of that Act when no other provision was applicable, and the period of limitation was twelve years from the time when the cause of action arose.3

Provisions corresponding to the present Articles 142 and 144 were first introduced in Articles 143 and 145 of the Act of 1871, with this difference, that the third column of Article 145 of the Act of 1871 corresponding to the present Article 144, contained the words "or of some person through whom he claims" The said words have been omitted in the later Acts apparently in view of the new definition of the word "defendant" introduced in them.

There is no difference between the present Articles 142 and 144 and the corresponding Articles in the Act of 1877.

- 2. Scope of Articles 142 and 144 .- Article 144 is a residuary Article and applies only to suits for possession of immovable property to which no other Article is applicable. It follows that if Article 142
 - 2. (1883) 5 Alt 1 (6) 9 Ind App 93 5 Shome L R 80 4 Sar 382 (P C), Karan Singh v Bakar Als Khan
 - (1874) 13 Beng L R 312 (322, 323) 1 Ind App 157 3 Sar 314 (P C), Rans
 - Mewa Kunwar v Rans Hulas Kunar (1889) 3 C P L R 162 (163), Kheisingh v Mt. Radha.
 - (1870) 13 Suth W R 459 (460), Gour Mones Moorain v. Shunkures Paharinee.
 - (1864) 1 Suth W R 29 (30), Rajah Barodakant Roy v. Sookmoy Mookerjee.
 - (1879) 3 Bom 452 (785), Bhaskarappa v Collector of North Kanara.
 - (1869) 6 Bom H C R 66 (68), Lakshuman Rampi v. Ramlal.

(1009) 1 Y T 1000 131 P10 (P10) #4 T 3 F - 000 T--

Note 2

1. (1893) 23 Bom 725 (736) 26 Ind App 71 1 Bom L R 607 3 Cal W N 621 : 7 Sar 513 (PC), Ranchordas Vandratandas v Partatibat (Art 141

(1899) 2 Bom L R 106 (108). Hathismah v. Satilal (Art. 144 does not apply

where Art 141 applies 1 (1917) A 1 R 1917 Bom 11 (13) 42 Bom 69 43 Ind Cas 233, Subbi Ganpatibhatta v. Rambrishnabhatta. (Do.)

Arts. 142 & 144 is applicable to a particular case, Article 144 cannot be applied to Note 2

- (1886) 12 Cal 594 (596, 597), Azam Bhuyan v. Faizuddin Ahmed. (Do.)
- (1929) A I R 1929 Cal 93 (95): 114 Ind Cas 139, Shiva Prasad Saw v.

Bhadramoni Dassi. (Do.)

Vardyanatha v. Savsthrs Ammal (Do.)

- (1918) A T R 1918 Mad 469 (480) : 41 Mad 75 : 42 Ind Cas 245 (F B), (1902) 25 Mad 507 (510, 511, 512); 12 Mad L Jour 110, Seshamma Shet-
- tata v. Chickaya Hegade.
- (1926) A I R 1926 Mad 181 (181): 91 Ind Cas 454, Kuppuswami Mudaliar v. Chockalarnga Mudaliar.
- (1931) A I R 1931 Mad 707 (710); 54 Mad 883 . 185 Ind Cas 9, Ramahotayya v. Sundararamayya. (Art. 144 will not apply where Art. 96 applies)
- (1937) A I R 1937 Nag 129 (130) I L R (1937) Nag 254 171 Ind Cas 271, Shankarsa v. Punam Chand,
 - (1923) A I R 1923 Oudh 185 (201): 26 Oudh Cas 133: 75 Ind Cas 626, Zarıf-un-nissa v. Shafi-uz-zaman.
- (1928) A I R 1929 Oudh 155 (188): 108 Ind Cas 817, Abdul Halim v. Saadat Alı.
- (1918) A I R 1918 Pat 570 (573): 47 Ind Cas 290: 3 Pat L Jour 327, Naths Putart v. Radha Binode Nath.
- (1910) 8 Ind Cas 1005 (1005) : 33 All 221, Ram Lakhan Ron v. Gafadhar
- (1911) 9 Ind Cas 300 (303) : 1911 Pun Re No. 26 (F B), Sundar v. Shalig-
 - (1912) 15 Ind Cas 10 (11) (All), Bhole Singh v. Bhagu and Singh.
- (1921) 64 Ind Cas 462 (464) (All), Mt. Jagrani Misrani v. Mt. Sheo Dulari. tinnel & Cal T Toma Ke tool Demanatt Chattanan Kusum Kamini Debi.

ttacharree v. Jagdish

- (1921) A I R 1921 All 389 (391): 43 All 164: 61 Ind Cas 546, Mt. Ram Prars v. Budh Sen
- (1897) 24 Cal 715 (719, 720), Hars Mohan Shaha v. Baburals
- (1905) 2 Cal L Jour 448 (457), Ram Churn Teuars v. Protap Chandra Dutt. (1907) 5 Cal L Jour 638 (640, 641), Elokeshi Dası v. Abınaslı Chandra Bose. (Sale in execution void ab entito - Suit for possession of property is
 - governed by Art 144 and not by Art, 12.) (1922) A I R 1922 Cal 176 (177): 70 Ind Cas 602, Janahmath Saha v. Baskuntha Nath. (Suit by auction-purchaser against trespasser -Art. 138 does not apply - Art 144 applies.)
 - (1915) A 1 R 1915 Lah 303 (305); 29 Ind Cas 731, Mahomed Bakhsh v. Balkishan. (Objections to execution sale summarily rejected - Suit for recovery of property thus illegally sold — Art. 144 and not Art. 12 governs suit.)
 - (1918) A I R 1918 Lah 330 (332): 48 Ind Cas 399: 1918 Pun Re No. 113, Hera Singh v. Gulam Qader. (Minor not properly represented in suit-Decree-Sale of minor's property in execution - Suit by minor to set aside sale is governed by Art. 144 and not Art. 12)
- (1924) A I R 1924 Lah 396 (397): 71 Ind Cas 822, Azım Khan v. Karım. [Owner not party to decree-Sale under decree - Suit by owner to set aside sale and for possession is governed by Art 144 and not by Art. 12.) (1925) A I R 1925 Lah 53 (54): 79 Ind Cas 39, Munna Lal v. Hamid Als. (1000) 4 T D 1010 T .1 Des tours ---

. -.,

Arts. 142 & 144 Note 2

- (1926) A I R 1926 Lah 238 (238): 92 Ind Cis 980, Narain Das v. Siraj-ud-din. (Do.)
- (1933) A I R 1933 Lah 91 (92) · 141 Ind Cas 404, Mt. Radha v. Ajudhia
- Prashed. (Do.)

 (1933) A. I. R. 1933 Luh 754 (756): 14 Luh 791: 148 Ind Cas I143, Mt.

 Ghulam Bib. v. Mt. Sariar Bib. (Sout by heir of Mahomedan dying

 intestite, for recovery of his shire—Art. I44 and not Art. 123 governs
- (1929) A.J. R. 1929. Lah. 549 (550). 117. Ind. Cis. 803 11. Lah. 20, Janov. Narsing. Jan... (Suit by Vithomedia co-heir for possession of his legal share is not governed by left 123 but by Art. 144.).
- (1929) A I R 1929 Born 141 (142): 118 Ind Cas 785, Bas Jees v. Bas Bebanboo.
 (Do.)
- (1914) A I R 1914 Oudh 369 (370, 371) 17 Ondh Cas 157; 24 1nd Cas 45, Artr-ul-Hal, v. Mariam Bibi. (Do.)
- (1920) A I R 1920 Mad 885 (89): 42 Mad 673: 51 Ind Cas 306, Secretary of State v. Gulam Mahboob Ahan. (Unlawful resumption of mam by Government — Suit for possession is governed by Article 144 and not Art. 14.)
- (1926) A. I. R. 1926 Mad 819 (850) 92 Ind Cas 245, Zamorin Rajah of Calicut v. Venkalayiri Pattar. (Suit by lessor against lessee's assignce for recovery of property by reason of forfeiture — Art. 144 and not Art. 143 applies.)
- (1916) A. I. R. 1916 Pat. 374 (324). 35 Ind. Cas. 87, Bisicamber Lal v. Jhulan Ram Tewarn. (Suit for possession. — Arts. 137 and 138 not applicable—4xt 144 applied.)
- (1925) A l R 1925 Pat 216 (223) 84 Ind Cas 586 . 4 Pat 139, Ram Bachhya Singh v. Kamakhya Narain.
- [1926] A I R 1926 Pat 421 (422). 96 Ind Cas 632 6 Pat 73, Agodhya Prasad v. Ramhhelauan Suigh (Land not within estate partitioned)

(1910)

- (1912) 15 Ind Cas 894 (396) 15 Oudh Cis 11I, Bisheshar Tewars v. Bisheshar Dayal (Art 144 and not Art 127 applies where the alleged joint family property his passed by sale to a stranger)
- (1905) 2 Cal L Jour 546 (550), Ram Kannas Ghosh v Harmarayan Singh, (Transfer of trust property by a trustee to the knowledge of the transferse that the property is trust property—Suit by successor of the trustee—Art 134, not Art. 144, applies)
- (1914) A I R 1914 Cal 733 (733) 24 Ind Cas 216, Abbas Dhali v Masabdi Karikar (Case falling within Art. 136—Arts 142 and 144 held not applicable)
- (1922) A I R 1922 Lah 166 (167) 2 Lah 164: 63 Ind Cas 794, Jula Singh, v Man Singh.
- (1926) A. I. R. 1926 Lah 437 (438) 96 Ind Cas 447 7 Lah 210, Abdul Wahab v Sccretary of State (Sunt against Government—Art. 149 and not Art. 144, applies)
- (1932) A I R 1932 Pat 145 (146) 11 Pat 165 . 142 Ind Gas 216, Ram Przsad v Bindeshuars Prasad
- (1929) A I R 1929 Cal 250 (250) 117 Ind Cas 593 56 Cal 616, Bisicara's, Chahrai arts v Rabija Khafun
 - [See also (1918) A I R 1918 Oudh 32 (53) · 21 Oudh Cas 1 : 44 Lo2 Cas 368, Bisheshar Baksh Singh v Bameshar Baksh Singh (1937) A I R 1937 Oudh 373 (876) 163 Ind Cas 593, Chene-
 - Balsh v. Bhola Singh (Sunt in substance for present of hereditary office—Art 120 does not apply—Art, 121 to the applies.)
 - (1922) A I R 1922 Born 211 (212) 46 Born 1003: 70 I.2 Co. from 1003 and Renar v Valunahomed (Smt by a subsequent recover property alternated by the former trusters in trust is governed by Art. 131 and not by Art. 142 []

Note 2

Arts, 142 & 144 is applicable to a particular case, Article 144 cannot be applied to

(1886) 12 Cal 594 (596, 597), Azam Bhuyan v. Farzuddin Ahmed. (Do.) (1929) A 1 R 1929 Cal 93 (95): 114 Ind Cas 189, Shiva Prasad Saw v.

Bhadramoni Dassi. (Do.) (1918) A 1 R 1918 Mad 469 (480): 41 Mad 75: 42 Ind Cas 245 (F B),

Vardyanatha v. Savithri Ammal. (Do.) (1902) 25 Mad 507 (510, 511, 512); 12 Mad L. Jour 119, Seshamma Shet-

tatı v. Chichaya Hegade. (1926) A 1 R 1926 Mad 181 (181) : 91 Ind Cas 454, Kuppuswami Mudaliar

v, Chockalainga Mudaliar. (1931) A I R 1931 Mad 707 (710); 51 Mad 888; 135 Ind Cas 9, Ramakotayya v. Sundararamayya. (Art. 144 will not apply where Art, 96

applies.) (1937) A I R 1937 Nag 129 (190) I L R (1937) Nag 254; 171 Ind Cas 271, Shankarsa v. Punam Chand.

(1923) A I R 1923 Oudh 185 (2011: 26 Oudh Cas 183: 75 Ind Cas 626, Zarif-un-nissa v. Sha fi-uz-zaman.

(1928) A I R 1928 Oudh 155 (188) 108 Ind Cas 817, Abdul Halim v. Saadal

(1918) A I R 1918 Pat 570 (578); 47 Ind Cas 290; 3 Pat L Jour 327, Nathe Pujari v. Radha Dinode Nash.

(1910) 8 Ind Cas 1005 (1005): 33 All 224, Ram Lahhan Roy v. Gajadhar (1911) 9 Ind Cas 800 (303): 1911 Pun Re No. 26 (F B), Sundar v. Shalig-

ram. (1912) 15 Ind Cas 10 (11) (All), Bhole Singh v. Dhagwant Singh.

(1921) 64 Ind Cas 462 (464) (All), Mt. Jagrans Misrans v. Mt. Sheo Dulars.

(1906) 4 Cal L Jour 56 (60), Ramanath Chatterjee v. Kusum Kamini Debi. (Art 144 will not apply where Art. 127 applies.)

(1897) 1 Cal W N 543 (514), Umesh Chandra Bhattacharjee v. Jagdish Ohandra Dhatlacharjee. (Do)

(1921) A I R 1921 All 389 (391): 43 All 164: 61 Ind Cas 546, Mt. Ram Plate v. Budh Sen

(1897) 24 Cal 715 (719, 720), Hart Mohan Shaha v. Daburali.

(1905) 2 Cal L. Jour 448 (457), Ram Churn Tewars v. Protap Chandra Dutt. (1907) 5 Cal L. Jour 638 (640, 641), Eloheshi Dasi v. Abinash Chandra Bose. (Sale in execution void ab unitio - Buit for possession of property is governed by Art 144 and not by Art. 12.)

(1922) A I R 1922 Cal 176 (177): 70 Ind Cas 602, Janahmath Saha v. Baskuntha Nath. (Suit by auction-purchaser against trespasser — Art. 198 does not apply — Art. 144 applies.)

(1915) A I R 1915 Lah 303 (305): 29 Ind Cas 731, Mahomed Balhsh v. Balkishan. (Objections to execution sale summarily rejected - Suit for recovery of property thus illegally sold - Art. 144 and not Art. 12 governs suit.) 110101 A T TO 1010 T -1 1000 10001

(1922) A I R 1922 Lah 447 (448): 67 Ind Cas 517, Alam Din v. Allah Dad. (No proper guardian appointed in execution proceedings against minor—Sale concluded—Suit to set aside sale by minor is governed by Art. 144 and not Art. 12)

(1921) A I R 1921 Lab 396 (397): 71 Ind Cas 822, Azim Khan v. Karim. (Owner not party to decree—Sale under decree — Suit by owner to set aside sale and for possession is governed by Art. 144 and not by Art. 12.}

(1925) A 1 R 1925 Lah 53 (54) . 79 Ind Cas 89, Munna Lal v. Hamid Als. (1009) 4 T D 1039 T-L net then

Arts. 142 & 144 Note 2

(1976) A. I. R. 1976 Lab 238 (23-); 92 Ind Cas 980, Naram Das v. Straj-uddm. (Do.)

(1933) A I R 1933 Lab 91 (92): 141 Ind Cas 401, Mt Radha v. Ajudhia Prashad. (Do)

(1933) A. I. 1931. Lah 784 (r-6): 14 Lah 794 - 148 Ind Cis 1143, Mt. Ghulam Bita v. Mt. Sarrar Bita. (Sult by heir of Mahomedan dying intestate, for recovery of his share—Art. 244 and not Art. 123 governs.

ruit)
(1920) A.T.R. 1929 Lab 549 (550) 117 Ind Cas 803 11 Lab 29, Jano v.
Narving Dits. (Suit to Mihomedian co heir für procession of his legil

share 15 not governed by Art. 123 but by Art. 144) (1929) A. I. R. 1920 Born 141 (142); 113 Ind C15 785, Bas Jan v. Bas Bibanboo. (Do.)

(1914) A I R 1914 Oudh 369 (370, 371): 17 Oudh Cas 157: 21 Ind Cas 45, Aru-ul-Hal v, Mariam Bibs. (Do.)

(1920) A IR 1920 Mad 855 (869) 42 Mad 673: 51 Ind Cas 806, Secretary of State v Gulam Mahloob Kham (Universal recumption of mam by Government — Suit for possession is governed by Article 144 and not Art, 14)

(1926) A. I. R. 1926 Mad 849 (850) * 92 Ind Cas 245, Zamorin Rajah of Caltest v. Venkatajiri Pattar. (Suit by le-sot against lessee's assignce for recovery of property by reason of forfettute — Art. 111 and not Art. 143 applies.)

(1916) A. T. R. 1916 Pat. 324 (324). 35 Ind Cas. 87. Biswambar Lalv. Jindan Ram Tewari. (Sunt for possession. — Arts. 137 and 139 not applicable.—Art. 141 applied.

1925) A I R 1925 I'at 216 (224). Fi Ind Cas 586 4 Pat 199, Rom Hachhya Singh v. Lamakhya Naram.

(1926) A.I.R. 1920 Pat 421 (422): 96 Ind. Cas. 632: 6. Pat 73, Ajodhya Prasad v. Ramhhelavan Sungh. (Land not within estate partitioned and allocated to one person—Rightful owner's suit for possession, not falling under Art. 14—Art. 144 applies.)

(1910) 5 Ind Cas 273 (275) (111), Gajadhar Ras v. Ramlahhan Ras (Sunt

held governed by Art 144 as Art 137 del not apply)

(1912) 15 Ind Cas 934 (396) 15 Outh Cas 111, Bisheshar Tewars v Bisheshar Dayal. (Art 144 and not Art 127 applies where the alleged joint family property has passed by sale to a stranger)

(1005) 2 Cal L Jour 546 (550), Ram: Kannas Ghosh v Harmarayan Singh. (Transfer of trust property by a trustee to the knowledge of the transfers that the property is trust property—Suit by successor of the trustee—Art 134, not Art. 144, applies.)

(1014) A I R 1014 Cal 783 (783) . 21 Ind Cas 216, Abbas Dhali v. Masaba: Karikar (Case falling within Art. 186—Arts. 142 and 144 held not applicable.)

(1922) A I R 1922 Lah 166 (167) 2 Lah 164 . 62 Ind Cas 794, Juta Singh v. Man Singh.

(1926) A. I. 1926 Lah 437 (438) 96 Ind Cas 447 7 Lah 210, Abdul Wahab v Secretary of State (Suit against Government—Art 149 and not Art. 144, applies)

(1932) A I R 1932 Pat 145 (146) 11 Pat 165 142 Ind Cas 246, Ram Prasad v. Bindeshv art Prasad.

(1929) A I R 1929 Cal 250 (250) 117 Ind Cas 593 · 56 Cal 616, Berwanath Chakravart v Rabya Khatun. [See also (1918) A I R 1918 Oudb 82 (53) 21 Ondh Cas 1 44 Ind

Cas 368, Bisheshar Daksh Singh v. Rameshar Baksh Singh (1937) A I R 1937 Oudh 373 (376) 163 Ind Cas 593, Chandrila Baksh v Bhola Singh (Suit in substance for possession of

Bahsh v Bhola Singh (Suit in substance for possession of hereditary office—Art. 120 does not apply—Art 121 or Art 144 applies)
[1920] A I B 1922 Born 211 (212) 46 Born 1900 To Led Car 212

(1922) A I R 1922 Born 211 (212) 46 Born 1009. To 1nd Cas 912,

Bas Reua v Valunahomed (Sunt by a subsequent trustee to
recover property alternated by the former trustee in breach of the
trust is governed by Art. 184 and not by Art 142]]

Arts. 142 & 144 Note 2

it.2 Where, therefore, the question arises whether Article 142 or Article 144 applies to a particular case, it must first be decided whether Article 142 applies to it and it is only when it is clear that it is not applicable, that Article 144 should be applied.

Now Article 142 applies only where the plaintiff, while in possession, has been dispossessed or has discontinued his possession.2a A person can be said to be dispossessed or to discontinue his possession only when another person enters on the property in the possession of the plaintiff, and such entry stself is adverso to the former, that is, in contravention of his title. Where the plaintiff is not in possession at all but gets a title to it while the defendant is in lawful possession of it, it cannot be said that the defendant has made any entry on the property while in the possession of the plaintiff in contravention of the latter's title. It is not a case of the plaintiff being dispossessed or discontinuing his possession. Article 142 will not apply to such a case, the Article applicable would be Article 144 if no other specific Article is applicable to it. Thus, where A transfers his property to B but fails to deliver possession to him and B consequently sues A for possession, the case is not one under Article 142 and consequently Article 144 may apply. See also the undermentioned cases. 48 Again, 2. (1934) A J R 1934 All 993 (995) 152 Ind Cas 1 . 57 All 278 (F B), Buidhya

Chal Chand v. Ram Gharth. 2a.(1932) A I R 1932 P C 55 (55): 59 Ind App 180: 11 Pat 272: 186 Ind Cas

798 (P C), Bageshwars Charan v. Jagarnath Kuars. S. Bee Notes, infra See also (1912) 17 Ind Cas 606 (608) . 8 Nag L R 163, Kanhamalal v. Dular

Single. (Art. 142 will not apply unless possession of defendant is adverse, nor will Art. 144 apply.) (1928) A I R 1923 Oudh 155 (188): 108 Ind Cas 817, Abdul Halim Khan

v. Saadat Als Khan.

(1931)A I R 1931 P C 186 (188): 130 Iud Cas 815 · 10 Pat 407: 58 Ind App 29 (P C), Nageshwar Bur Roy v. Bengal Coal Co , Ltd. (Adverse possession may imply dispossession.) 4. (1911) 12 Ind Cas 431 (431, 432) (Lah), Nauaz v. Muhammad Ahsan.

(1922) A I R 1922 All 410 (411): 77 Iud Cas 113, Surat Smah v. Umrao

Singh. (Suit for property got under compromise) (1924) A I R 1924 Cal 394 (394) : 81 Ind Cas 675, Annada Mohon Roy v.

King Das. (1930) A I R 1930 Lah 914 (915): 129 Ind Cas 699, Ramchand v. Gopal Singh. (Suit for possession and partition of sharo in joint property

by purchaser at auction sale, following symbolical possession)

(1908) S1 Mad 51 (53, 54); S Mad L Tim 241, Mogera Nandi v. Parameshuar.

(1920) A I R 1920 Nsg 199 (200): 56 Ind Cas 929, Mt. Gafibai v. Nil Kanth.

(1933) A I R 1933 Oudh 363 (365) : 147 Ind Cas 430, Param Sukh v. Sheo Morat. (Suit by lessee for possession of property leased) (1930) A I R 1930 Oudh 310 (311) . 126 Ind Cas 703, Yakub Khan v. Sheo

Dulary. [See also (1876) 25 Suth W R 521 (523), C. G. D. Betts v. Mohamed

Ismail. (A suit for possession of land got under a compromise in a former suit) (1907) 10 Oudh Cas 17 (20), Karim Baksh Khan v. Mehdi Hasan

Khan. (Sust for property got moder compromise)] 4a.(1592) 16 Born 172 (177). Hanmant Ramchandra v. Dabaji Abaji. (Suit for possession by creditor entitled to it on default of payment by debtor

-Art. 144 applies.)

where the plaintiff is in possession and the defendant has entered Arts, 142 & 144 on the property, but such entry is under right derived from the

plaintiff, or is permissive, or is otherwise consistent with the title of the plaintiff, it eannot be said that the entry itself is in contravention of the plaintiff's title, though by reason of subsequent events, his possession may become adverse to the plaintiff. Article 142 will not apply to this case also and consequently Article 144 may apply.5

The test therefore to see whether Article 112 applies to a particular case is to ascertain whether the defendant entered on the property while the plaintiff was in possession and whether such entry was from the beauning adverse to the plaintiff.5a

In order to ascertain this, it is necessary to consider the facts and circumstances admitted or proced in the case. Where the plaintiff himself alleges possession and dispossession, it may generally be sufficient to bring the case under Article 142,6 unless the facts show

- (1895) 1885 Pun Re No 36, Sheopi v. Dhan Singh (When defendant came on the land, it was not in contravention of plaintiff's title as on ner as plaintiff got his title only later)
- (1915) A I R 1915 Mad 539 (539, 540) 25 Ind Cas 692, Venhatarathman v Venhataramah (Art 141 applies to a suit by an adopted son for the recovery of immovable property , the starting point is the date of his adoption)
- 5. (1928) A I R 1928 Cal 582 (583) . 117 Ind Cas 532, Monmothanath v. Bepin Behary. (Permissive possession at the start)
 - (1887) 1887 All W N 91 (91), Dalip Singh v. Tulishram, (A suit for the recovery of immovable property against a benami purchaser who denies the title of the real purchaser is governed by Art 144)
 - (1931) 1931 M W N 856 (856), Lahshmunarayana Nasada v Madappayya (In 1910, an agent of the plaintiff granted a lease of the plaintiff's property treating it as his own. In 1915 plaintiff knew about the lease. The agency terminated in 1922 and this suit was brought in 1925 for possession of the leased property. Held, that there being no question of possession and dispossession Article 142 does not apply.)
 - (1926) A I R 1926 Mad 849 (850) 92 Ind Cas 245, Zamorin Raja of Calicut v. Venhatagirs Pattar.
 - (1938) A I R 1938 Mad 8 (11) I L R (1938) Mad 220 176 Ind Cas 535, Sitamma v Sitapatirao (Widow and adopted son hving together -Possession and management by son of stridhana property of widow, not adverse to widow - Son's wife collecting renty exclusively after widow's death-Sait by heir of widow for possession-Art 141 applies)
 - (1928) A I R 1928 Oudh 155 (188) 108 Ind Cas 817, Abdul Hahm v Saadat
 - (1933) A 1 R 1933 Cal 102 (108] 140 Ind Cas 799, Zaunuddin Hossain v. Md Abdur Rahim
 - (1939) A 1 R 1939 Nag 7 (9), Maherban Lalle Penjara v Yusufkhan Kallu Pinjara (Defendant's possession was by transfer from plaintiff and not against his will-No dispossession)
- (But see (1919) A I R 1919 Cal 1027 (1027) 46 Ind Cas 895, Mohendra Nath Sow . Rayans Kauta Sow (Plaintiff in possession of patns by receipt of services from chankidars-Latter refusing to vacate on resumption—Held it was a case of dispossession)] 5a (1912) 17 Ind Cas 606 (608) 8 Nag L R 163, Kanhanyalal v. Dular Singh.
- 6 (1935) A I R 1935 All 774 (775) 155 Ind Cas 824. Babos Singh v Bam
 - (1890) 14 Bott 458 (462), Fals Abdulla v. Baban Gangan,
 - (1905) 23 Bom 480 (489) 7 Bom L R 497, Baluant Ramchandra v. Secre. tary of State

Arts. 142 & 144 Note 2

Arts. 142 & 144 that there could not have been a dispossession or discontinuance of

- (1868) 5 Bom H C R A C 139 (142), Lalchand Ambaidas v. Sakharam. (1872) 9 Bom H C R 53 (59), Lakshmibas v. Vithal Ramchandra.
- (1908) 10 Bom L R 571 (572), Bhagwansingh v. Secretary of State. (1910) 8 Ind Cas 639 (643): 12 Bom L R 956 (968, 969): 35 Bom 79, Vasu
 - deo Atmaram v. Eknath Balkrishna. (1938) A I R 1938 Born 210 (212) : 175 Ind Cas 93, Naru Shidu v. Krishna
 - (1938) A I R 1938 Bom 210 (212) : 175 Ind Cas 93, Naru Shidu v. Krishi Shidu.
- (1572) 17 Suth W R 505 (507), Bhromar Coomar Debee v. Banes Madhub Banerjee.
 (1576) 25 Suth W R 217 (217), Mt. Dhorjobutty Chowdhram v. Chamroo
- Mundul. (1877) 26 Suth W R 105 (106), Hurruck Narain Thaccor v. Mt. Lutchmes
- Koer. (1916) A I R 1916 Cal 582 (592) ; 31 Ind Cas 965, Krishen Doyal Gir v. Irshad Ali Khan,
- (1922) A I R 1922 Cal 557 (558): 67 Ind Cas 673, Rakhal Chandra v. Durga Das.
- (1924) A I R 1921 Cal 855 (857) : 51 Cal 669 : 78 Ind Cas 679, Suresh Chandra v. Shitikania,
 - (1927) A I R 1927 Cal 365 (367): 100 Ind Cas 866, Kalipada Basu v. Fort Gloster Jute Manufacturing Co. Ltd.
- (1938) A I R 1938 Cal 180 (151): 174 Ind Cas 511, Guru Charan Rudra Pal v. Mafjuddm Molla. (1938) A I R 1939 Cal 206 (203): 175 Ind Cas 247. Ramendra Prosad Basu
- (1939) A I R 1938 Cal 206 (203) : 175 Ind Cas 247, Ramendra Prosad Basu. v. Barada Prosad Basu. (1933) A I R 1933 Lab 627 (628) : 143 Ind Cas 429, Sheru v. Sham Singh.
- (1935) A I R 1935 Lah 507 (508): 143 Ind Cas 228, Sheru V. Sham Singh. (1935) A I R 1935 Lah 507 (508): 157 Ind Cas 399, Kuar Sain V. Gulab.
- (1935) A I R 1935 Mad 947 (952) : 158 Ind Cos 854, Venkatakrishnayya v. Venkataratnam.
- (1917) A I R 1917 Nag 7 (13): 14 Nag L R 82: 43 Ind Cas 913, Ganno v. Bens.
- (1928) A I R 1928 Oudh 848 (851) : 110 Ind Cas 180, Milap Chand v. Mt. Mohini Bibi.
- (1935) A I R 1935 Oudh 88 (89) : 153 Ind Cas 871 : 10 Luck 513, Ram Shankar v. Sheo Dutt.
- (1935) A I R 1935 Oudh 425 (426): 156 Ind Cas 92, Wahid Ale v. Mahboob Ale Khan. (1924) A I R 1924 Pat 616 (617): 3 Pat 673: 81 Ind Cas 405, H. Mathewson
- v. Secretary of State. (1925) A 1 R 1925 Pat 68 (93): 93 Ind Cas 451 (F B), Harshar Prasad v.
- Kesho Prasad. (1925) A I R 1925 Pat 376 (378): 86 Ind Cas 618, Lachmi Narain v. Rebati
- Debya. (1925) A I R 1925 Pat 625 (631): 4 Pat 510: 87 Ind Cas 849: 88 Ind Cas 141. Hittendra Sundh v. Rameshnar Sundh
- H. H. Hundra Singh v. Rameshuar Singh.
 A I R. 1918 Low Bur 131 (131, 132): 41 Ind Cas 722. Appan Charant. Kyause Ma Ma.
- (1909) 1 Ind Cas 901 (901) (Mud), Venkatarayudu v. Sankarayya.
- (1909) 2 Ind Cas 381 (393) (Cal), Lalu Sahu v. Ghunarsa Uraon. (1911) 11 Ind Cas 521 (522) (Lah), Ghulam Rasul v. Umar.
- (1911) 11 Ind Cas 521 (522) (Lah), Ghulam Rasul v. Umar. (1912) 15 Ind Cas 10 (11) (All), Bhole Singh v. Bhagwant Singh.
- (1913) 22 Ind Cas 64 (65) (Cal), Bishambhar Satbhaya v. Nadiar Chand Mandal.

Note 2

possession in the sense in which the expression is used in Art. 142.64 Arts. 142 & 14 But the fact that the plaintiff does not allege dispossession in his plaint cannot render Article 142 inapplicable if the facts show that the defendant must have entered on the land in the possession of the plaintiff and that such entry must have been adverse from the beginning. The plaintiff cannot, by framing a suit as if there was no

- (1934) A I R 1934 All 993 (997) . 152 Ind Cas 1 57 All 278 (F B), Bindhya Chal Chand v Fam Ghareb.
- (1890) 1890 Bom P J 175 (175), Zuzia Francis v Manoel Gustin Fernan.
- (1935) A I R 1935 Lah 507 (50%); 157 Ind Cas 399, Kaur Sain v. Gulab. (1938) A I R 1938 Oudh 214 (215) ; 177 Ind Cas 52, Manzoor Als Khan v.
- Pateshwars Prasad. (1933) A I R 1933 Rang 48 (48, 49) : 144 Ind Cas 274, Ma Hme Ni v. Ma
 - Howe Yan U. [See also (1929) A I R 1929 Born 14 (19) 53 Born 12 115 Ind Cas
 - 369. Sayan Rao Gaeluar v. Madhairao.
- (1919) A I R 1919 Lah 133 (193) 50 Ind Cas 762 . 1919 Pun Re No. 117, Chanan Mal v. Mela Ram } Ga. See (1929) A I R 1929 Cal 297 (297) . 56 Cal 914 119 Ind Cas 289, Gaya
- Prosad v. Bal ya Mans Dass (Plaintill alleged dispossession-But facts showed no dispossession-Art, 144 was applied.)
- (1911) 9 Ind Cay 554 (555) (Cal), Bailash Chandra v. Amind Ali. (7 Cal 225. Followerl)
 - (1937) A I R 1937 Nag 129 (129, 130) I L R (1937) Nag 254 171 Ind Cas 271. Shankarsa v Punam Chand.
 - (1925) A I R 1925 Oudh 42 (44) 27 Oudh Cas 130 . 79 Ind Cas 964, Gur Sahai Kandu v. Chhedi
 - (1981) A I R 1931 Ocdb 177 (228) : 136 Ind Cas 642, Mahomed Asım Khan v. Mahomed Sandat Als Khan
 - (1934) A I R 1934 All 933 (1001) . 57 All 278 152 Ind Cas 1 (F B), Bindya-chal Chand v Ram Gharib.
 - (1935) A I R 1935 All 964 (965) 159 Ind Cas 521, Gurcharan Prasad v Jas Narain Singh (Defendants planting trees on land—Suit for possession and removal of trees-Art, 142 applied)
 - (1915) A I R 1915 Bom 92 (93) 39 Bom 835 28 Ind Cas 24, Subappa v. Venkappa.
 - (1891) 18 Cal 642 (646), Kartick Chunder . Saroda Sundun Debi. (1926) A I R 1926 Cal 1166 (1167) 97 Ind Cas 1003, Birendra Nath Roy v.
 - Satis Chandra.
 - (1935) A I R 1935 Cal 228 (229), Jnanana Prasanna v. Hemendranath.

 - (1927) A I R 1927 Lah 236 (236) 100 Ind Cas 477, Kanshi Ram v. Taja. (1919) A I R 1919 Pat 207 (210) 51 Ind Cas 801 4 Pat L Jour 463, Bhikhad Bhunjan v Upendra Nath
 - (1933) A I R 1933 Rang 413 (416) 149 Ind Cas 1120, Tun Mea Aung v Ma Alt Mra (Where plaintiff alleges that he is owner of certain piece of land but the defendant is proved or admitted to be in possession of it for a long time, and that not with the leave and heense of the plaintiff, a suit for possession is governed by Art 142 and not Art 144
 - (1910) 8 Ind Cas C39 (G12) . 35 Bom 79, Vasudeo Atmaram v Eknath Balakrishna
 - (1939) A I R 1939 Nag 7 (9), Maherban Lallı Pınjara v Yusufhhan Kallu Puntara (Dispossession can be established by admissions or by the facts proved)
 - [See also the following cases:
 - (1890) 14 Bom 458 (462), Fals Abdulla v Babajs Gungajs.
 - (1926) A I R 1926 Lab 13 (14) 89 Ind Cas 995, Ismail v. Ibrahim. (1931) A I R 1934 Oudh 21 (23) 147 Ind Cas 805, Mahomed Mahmud
 - v. Mahomed Afaq. (1912) 14 Ind Cas 295 (297) (Mad), Prakhaters Parkum v Koram.]

Arts, 142 & 144 dispossession, avoid the operation of Article 142.8 Note 2

An examination of the cases arising under the two Articles shows that the decisions are generally consistent with the test referred to above. There have, however, been several cases expressing a variety of views which are not consistent with the said test. Thus, it has been held that the applicability of Article 142 or Article 144 must be decided only with reference to the pleadings in the case,9 that Article 142 cannot apply in cases in which the plaintiff does not allege in his plaint his possession and dispossession. 10 that Article 144

> (But see (1884) 1884 Pnn Re No. 49, Muhammad Yar v. Ghulam. (Article 144 was applied-Submitted wrongly decided)

> (1927) A I R 1927 Lah 230 (230) : 100 Ind Cas 51, Gangaram v. Hasan Shah.]

8. (1930) A I R 1930 Lah 230 (231) : 126 Ind Cas 800, Jumman v. Nihal Chand.

9, (1926) A I R 1926 Cal 1166 (1167): 97 Ind Cas 1003, Birendia Nath Ray v. Satis Chandra. (Per Cuming J -To discover which is the correct Article applicable it is sufficient to look at the allegations in the plaint.)

(1935) A I R 1935 Lah 507 (508) 157 Ind Cas 399, Kaur Sam v. Culab.

(1932) A I R 1932 Oudh 46 (47): 137 Ind Cas 678: 7 Luck 250, Suras Bals

v. Mahadeo Prasad. (1937) A I R 1937 Sand 226 (228) : 30 Sand L R 472 : 170 Ind Cas 621, Wadero Warisdino v. Bhai Pursumal.

 (1927) A I R 1927 Lah 70 (70); 93 Ind Cas 878, Mt. Nawaz Bar v. Ghulam Moht ud din.

(1925) A I R 1925 Mad 834 (835) · 37 Ind Cas 886, Peria Jeeyanaraswains Wahomed Esoof Sahib

(1926) A I R 1926 Oudh 318 (315) . 29 Oudh Cas 131 : 92 Ind Cas 825, Suhhdeo s Mt Ram Dulars

(1928) A I R 1928 Ondh 246 (247) 103 Ind Cas 109, Fakir Bakhsh Singh v. Prog Singh. (A I R 1926 Oudh 313, Followed)

(1929) A I R 1929 Lab 596 (597) : 127 Ind Cas 8, Mohammad Far v.

Mohammad Yar. (1934) A I R 1934 Oudh 21 (24): 147 Ind Cas 805, Mahomed Mahmud v. Mahomed Afan.

(1934) A I R 1934 Pat 593 (593) : 152 Jud Cas 906, Kanchan Teli v. Moga Makton.

(1926) 97 Ind Cas 135 (137) (Pat), Mt Dharichna Kuar v. Keshava Prasad Singh.

(1916) A 1 R 1916 Low Bur 48 (49) . 8 Low Bur Rul 264 . 35 Ind Cas 432. Aung Hla v. Ton Gyr

(1934) A I R 1934 Lah 245 (247) : 144 Ind Cas 72, Ala Abbar v. Rahha.

(1934) A I R 1934 Lah 1019 (1020), Bishambar Das v. Telu Ram.

[See also (1933) A I R 1933 Lah 105 (106), 141 Ind Cas 234, Raushan Ara B. jam v. Mahomed Beg (1915) A I R 1915 Bom 92 (93) . 39 Bom 335 ; 28 1nd Cas 24, Sub-

bappa Shankareppa v. Venkappa Golappa (1925) A I R 1925 Nag 370 (370) : 87 Ind Cas 1023, Singuit v. Gam-

bhirgi. (1931) A I R 1934 Nag 36 (39): 30 Nag L R 284 · 148 Ind Cas 62,

Ganpatrao v. Vithabai. (1926) A I R 1926 Pat 577 (579) 97 Ind Cas 282, Kesho Prasad Singh

v. Kırlarath. (1927) A I R 1927 Mad 287 (297): 99 Ind Cas 312, Ramanujachariar v. Sundarachariar.

(1925) A I R 1925 All 454 (455) : 85 Ind Cas 578 : 47 All 389, Ali Hammad v. Ghurpattar Singh.

will apply to all cases based on title whether dispossession has also Arts, 142 & 144. been alleged or not,11 that Article 142 will not apply where the plaintiff was never in possession and that where the defendant denies that the plaintiff was ever in possession, Article 142 cannot be applied.12 It is submitted that none of these views can be accepted as correct on principle.

Notes 2-3

3. Suit must be for possession. - Articles 142 and 144 apply only to suits for po-session 1 In order that a suit may be one for posse-sion it is necessary that there must be a prayer in the plaint

- (1927) A I R 1927 Lah 171 (172) . 99 Ind Cas 642, Fagar Mohammed v. Pamzan.
- (1950) A 1 R 1930 Lah 608 (609) , 122 Ind Cas 81, Daulu Mal v.
- Rau al Baksh (1927) A 1 R 1927 Mad 1094 (1095) 99 1nd Cas 971, Kunha Mordin
- v. Pakkar Lutty (1933) A I R 1933 Nag 274 (276) . 30 Nag L R 18 150 Ind Cas 679,
- Mt. Juphan Y Zabu
- (1931) A I R 1931 Oudh 382 (384) 134 Ind Cas 599, Mt Zahida Legam . Mumtaz Ali Ahan.
- (1932) A I R 1932 Oudh 46 (47) 137 Ind Cas 678 7 Luch 250, Surag Balix Mahadeo Prasad
- (1932) \ I R 1932 Oudh 122 (122) 136 Ind Cas 256, Mt Zahida Begam v Muniar Hickhan
- (1935) A 1 R 1935 Pesh 133 (135) 158 Ind Cas 968, Mulla Ahmad v.
- Fazat Ahmad (1916) A I R 1916 Low Bur 48 (49): 35 Ind Cas 432 . 8 Low Bur Rul
- 264, Aung Hla . Ton Gys (1909) 3 1nd Cas 15 (17) (Cal), Guru Das Kundoo v. Basanta Kumar
- (1929) 117 Ind Cas 834 (384) (Lah), Hug Lal v Lal n) 11 (1929) A 1 R 1929 Lab 596 (597) 127 1nd Cas 8, Mahomed Far v. Mahomed
 - (1934) A I R 1934 Lab 576 (579) 151 1nd Cas 490, Harnam Singh v Upon-
 - der (hund (1936) 4 I R 1936 Lih 530 (532) 166 Ind Cas 684, Ishar Das . Ganpat
 - Hat I dispossessed by B and property afterwards transferred to U --Suit by .1 against C-Art 144 governs the case)
- (1925) A 1 R 1925 Oudh 246 (247) 108 Ind Cas 109, Pagu Baksh Smgh v. I'rag Singh 11a (1910) 8 Ind Cas 1095 (1095) 33 All 224, Ram Lakhan Ras v Gajadhar Ras.
- (A disposessed-A's property purchased by B m court-auction-After

who entered into possession after B's death before heir entered into possession-Art 144 applied-Submitted wrong as the case is clearly one of dispossesion as the heir must be deemed to have been in possession after B's death and before C's entry)

12, (1934) A I R 1934 Pat 593 (595) 152 Ind Cas 906, Kanchan Telt v Moga Makton

Note 3

1, (1936) A I R 1936 Oudh 397 (395) 164 Ind Cas 118, Partap Bahadur v Jacat at Small (Suit not for possession - Article 142 does not apply) (1931) A I R 1931 Pat 436 (437) 133 Ind Cas 453, Baijnath Jugal Kishore
v Manindra Chandra (Action for damages for trespass to mine and removing coal-Article 48 applies and not Article 142 or Article 144.)

Arts, 142 & 144 Note 3

for the dispossession of some one from the property claimed.² A suit for a mero declaration of right to property, for example, is not a suit for possession within the meaning of these Articles.³ In Francis

- (1923) A I R 1923 Lab 672 (673): 72 Ind Cas 1040, Khushi Muhammad v. Hayat. (Property contracted to be transferred — Suit for recovery of property—Suit is one for specific performance of contract governed by Art, 113)
 - (1936) 163 Ind Cas 347 (349) (Cal), Sarafuddin Nur Ahmad v. Jibannessa Khatoon. (Do)
 - (1932) A I R 1932 Lah 24 (25): 135 Ind Cas 203, Mahbub v. Munshs. (Do.) (1935) A I R 1935 All 569 (570) 156 Ind Cas 894, Suraj Patish Nandan v.
 - Mt. Atul Bibs. (Do.) (1908) 5 All L Jour 529 (531), 1908 All W N 245 : 4 Mad L Tim 445, Charna
 - v. Bans Lal. (Do)
 (1919) A I R 1919 Cal 593 (590): 50 Ind Cas 908, Joinmon Moulth v. Khudiram Sadhu Khan. (Art. 144 of the Limitation Act has no application to a guit for assessment of fair and equilable rent)
- (1697) 20 All 35 (36, 37): 1897 Aff W N 193 (F B), Francis Legge v. Rambaran Singh.
 - (1931) A I R 1931 Mad 707 (710): 54 Mad 883: 135 Ind Cas 9, Ramakotayya v. Sundaramayya. (It is not appropriate to apply Atticle 144 to a suit which does not claim any specific immorable property but only compensation in shape of a share in the original property divided.)
 - (1917) A I R 1917 Mad 407 (407): 35 Ind Cas 646, Siddalinga Swamulu v. Ramachandracharulu.
 - (1890) 2 Oudh Cas 79 (83), Ashik Ali v. Mozhar Ali Khan.
 - (1906) 9 Oudh Cas 292 (294), Raja Mumtaz Ali Khan v. Sarju Singh.
- (1899) 20 All 25 (36, 37); 1897 All W N 193 (F B), Francis Legge v. Rambaran Singh. (Suit for declaration of right and for actual possession.)
 (1930) A I R 1930 Bom 61 (63); 54 Bom 4; 124 Ind Cas 773, Kristnate v.
 - Annajec. (1916) A T R 1916 Cal 751 (753, 754): 31 Ind Cas 242, Drajendra Kishore v.
 - Bharat Chandra. (1910) 8 Ind Cas 639 (643) ; 12 Bom L R 956 (971) ; 35 Bom 79, Vasudeo
 - Atmaram v. Elnath Balkrishna. (1932) A I R 1932 Cal 842 (643) ; 139 Ind Cas 759, Nagendra Kishore v.
 - Brogendra Kishore. (1928) 111 Ind Cas 376 (377) (Oudb), Sant Baksh v. Ram Nath. (When a
 - suit is principally a declaratory suit based on title, it does not fall under Article 142 of Schedule I of the Limitation Act though the
 - (1899) 1899 Pun He No. 8, Naraun Singh v. Lihar Singh. (When plaintiff does not himself seek possession, and the object of the cut is to place a third party in possession, it is only a suit for a declaration and not a cut for possession within the meaning of Article 142 or Article 144, Seh. III, Limitation Act (XV of 1871).
 - (1901) I. C.I. L. Jonr 73 (78, 79), Mohabharat Shaha v. Abdul Hamid Khan.
 (1927) A. I. R. 1927 Cal 30 (32): 97 Ind. Cas. 635, Abdul Gafur v. Abdul Jabbar.
 - Khan.
 Nanda.
 in 20 All 25.)
 - (1920) A I R 1920 Pat C31 (635): 55 Ind Cas 247, Radha Kanta Lall v. Bhaguat Pravad.

Legge v. Rambaran Singh, where the plaintiff instituted a suit for Arts, 142 & 144 the declaration of right to and of actual possession in immovable property, their Lordships of the Allahabad High Court observed as

follows:

Note 3

"The respondents seek on the other hand, to bring the suit, though expressly described as a suit for a declaration of right to, and of possession in, immovable property, under Article 144 which provides for suits for possession of immovable property or of any interest therein. It seems to us that there is tho widest possible difference between a suit for a declaration such as is asked for in this suit and a suit for actual possession of immovable property. In a suit to which Article 144 would apply, there must be a prayer express or implied, for the dispossession of some one from the property or from the interest in it which the suit claims. In the present smt the plaintiffs have most distinctly asserted that they are, and have all along been, in possession of the property. There is no one to be dispossessed from it or from any interest in it."

Suits for possession must, under these Articles, be taken to mean snits in which possession is asked for as the primary relief. Where the primary relief asked for is something other than possession, and possession is asked as a consequence of the primary relief being granted, the Article governing the suit would be that appropriate to the primary relief and not Article 142 or Article 144. Thus, a suit for pro-emption is primarily to set aside a competing right with a consequential prayer for possession, and is therefore not governed by Article 144.5 On the same principle a suit for the redemption of a usufructuary mortgage involving a consequential prayer for possession is not governed by Article 144 but by Article 148.6 In Janki Kunwar v. Apt Singh,7 A had conveyed lands to B by a deed of sale. He subsequently filed a suit against B to have the deed of sale cancelled on the ground of fraud and undue influence, and, as a consequence, to have the property restored to him. It was contended that the suit was governed by the twelvo years' rule of limitation. Their Lordships of the Privy Council negatived this contention in the following words:

"It was not a suit for possession of immovable property in the sense in which the limitation of twelve years is applicable. The immovable property could not have been recovered until the deed of sale had been set aside, and it was necessary to bring a sout to set aside the deed upon payment of what had been advanced Their Lordships are clearly of omnion that

^{4. (1897) 20} All 35 (36, 37) 1897 All W N 193 (F B).

 ^{(1902) 24} All 17 (26)
 28 Ind App 248
 5 Cal W N 688 · 8 Sar 133 . 3 Bom L R 707 (P C), Batul Begam v. Mansur Ali Khan.

^{6, (1889) 14} All 1 (3) . 11 All 423 : 1691 All W N 211 (F B), Ashfaq Ahmad v. Wazır Alı.

^{7, (1887) 15} Cal 58 (65) 14 Ind App 148 5 Sar 92 , 12 Ind Jur 9 : R & J 99 (P C).

Arts. 142 & 144 Note 3

the suit falls within Article 91 of the Act of 1877, and is therefore barred."

See also the undermentioned cases to a similar effect.8

Where the primary relief asked for is possession, the suit will be regarded as one for possession within the meaning of these Articles, even though some other prayer which is ancillary to the prayer for possession, or which the plaintiff is not bound to ask, is also asked for in the plaint. Thus, a suit for possession and mesne profits and for correction of an entry in the Record of Rights, or a suit for possession with an ancillary prayor for the removal of trees planted on the lands of is a suit for possession governed by the twelve years' rule of limitation. Similarly, a suit for possession and for cancellation of a 5.(1929) A I R 1929 Mad 313 (317); 118 Ind Cas 431, Ramancamy, Cound-

- animal. (1937) A I R 1937 Cal 500 (504): 173 Ind Cas 755, Jafar Ali v. Nasiman-
 - (1937) A I R 1937 Cal 500 (504): 172 Ind Cas 755, Jafar Als v. Nasiman nessa Bibs.
 - (1917) A. I. R. 1917. Cal. 610 (611): 34 Ind. Cas. 188, Krishna Dhone v. Bhagaban Chandra. (Sale by guardian being only voidable, the ward cannot get possession without getting sale set aside. Suit will be governed by Article 44 and not by Article 144.)
 - (1935) A I R 1935 Mad 1 (2): 154 Ind Cas 616, Anhanma v. Kameshwar-amma.
- (1889) 11 All 456 (460): 1889 All W N 109, Hasan v. Nazo. (A plaintiff cannot by calling a sail one for possession get behind a document which stands in his way and obtain possession without setting asido the document.)

Althos 144 i

Surpanarayana v. Narayanastramy (Ward's suit for possession of property alienated by guardian during minority is governed by Article 44 and not by Article 144.)
[1932] A I R 1933 All 108 (1991): 53 All 739; 136 Ind Cas 71, Ram Charitter

(1932) A I K 1933 All 108 (1997): 53 All 138 I 136 I not Cas 71, Ram Charitter

Minr v Suraj Teta, (A suit by a minor after attaining majority
against a certified guardian to set aside a fraudulent transfer is

(A analy 3 of 1919)

Section 1 of Act 14 of 1859 and not within Cl. 12 (1919)

(1895) 12 Cal 69 (74 to 75), Raghubar Dyal Sahu v. Bhilya Lal Misser.
 (1919) A I R 1919 Pat 423 (424): 52 Ind Cas 301, Tafazul Khan v. Mahomed Bakhi Khan.

[See also (1864) 1864 Suth W R (Gap) 70 (80), John Grey v. Anundo John Monto] 10. (1927] A I R 1927 Oudh 89 (90): 99 Ind Cas 199, Suchit v. Mahomed Habib

(1922) A I R 1922 Oudh 47 (48) : 66 Ind Cas 799, Ghafur Khan v. Frag Narayan, document in a case in which the plaintiff is not bound to ask for Arts. 142 & 144 such cancellation, would be governed by the limitation applicable to

Note 3

11. (1930) A I R 1930 Cal 748 (749) 132 Ind Cas 156, Krishnadhan Laha v. Brogendra Nath. (Void transfer of minor's property-Suit by minor for possession after setting aside transfer - Suit is governed by twelvo verrs' rule)

(1912) 16 Ind Cas \$17 (\$45) (Lah), Rupa Shah v Irsad Als. (Do.)

a suit for possession 11 See also the undermentioned cases 12

(1929) A 1 R 1929 All 879 (891) 192 Ind Cas 680 52 All 110, Dan Chand v. Munns Lat (Do) (1883) 5 All 490 (491) 1883 All W N 61, Ramausar Pandey v. Raghubar

Jata (Do)

(1922) A I R 1922 Lah 386 (387) 68 Ind Cas 731, Sunder v. Shiaman, (Do.) (1928) A I R 1929 Nag 151 (151) . 107 Ind Cas 516, Waman v Vishnit.

(1884) 6 All 260 (262) : 1884 All W N 73, Hram Singh v. Intizam Ali. (1902) 30 Cal 433 (439). Banku Behars v. Krishto Gobindo.

(1693) 1893 Pun Re No 96, Wanta v. Fattu.

- (1652) 5 All 76 (73) . 1692 All W N 180, Hazars Lall v. Jadaun Sungh. (Where, in a suit for possession, cancelling or setting aside an instrument is purely incidental in granting the relief of possession, the suit in its escence and substance is one for the recovery of immovable property and Art 144 and not Art 91 applies)
- (1878) 2 Cal L R 10 (12), Trilochun Chattapadhya v. Nobolishore Ghuluch. (A suit by an heir for possession of immorable property in the hands of a person under an alleged sale deed by the deceased and to set aside the deed, is governed by Art 114 and not by Art 91)

(1916) A I R 1916 All 839 (840) 82 I. C 930, Mt Bageshra v Sheo Nath.

(1905) 8 Oudh Cas 191 (192), Duarka v. Salik.

(1909) 1908 Pan W R No 5, Amer Shah v. Haidar Shah.

- 12. (1986) A I R 1988 Lah 996 (999) 167 Ind Cas 916, Chhaju Mal v Multan Singh. (Alienation by manager - Suit by minor co-parceners on attaining majority for powession of property is governed by Art. 144 and not by Art 44 or Art. 91 }
 - (1934) A I R 1934 Lab 601 (602) 152 Ind Cas 633, Kaka v Fahir Chand. (Do)
 - (1915) A I R 1915 Bom 192 (184) 93 Ind Cas 441, Anandappa v Tolappa.
 - (1915) A I R 1915 Lah 200 (202) 29 Ind Cas 199, Radhu Ram v Mohan (1916) A I R 1916 Lah 247 (218) 33 1nd Cas 943 1916 Pun Re No 83,
 - Sajjad Als v Muhammad Zulfikar Als

(1894) 1894 Pun Re No 56, Bhas Asa Ram v Attar Singh

(1898) 1899 All W N 256 (257), Sheo Sahai v. Muhammad Askari. (1911) 12 Ind Cas 140 (145) (Lab), Muhammad Umar Ali v Amau Ali

- (1928) A I R 1928 Mad 1216 (1253 1254) 114 Ind Cas 626, Secretary of State v Abdul Rahim (Dispossession by public servant - Suit for possession-Order of public servant not necessary to be set aside -Art 14 does not apply but Art 144 governs the suit)
- (1924) A 1 R 1924 Mad 607 (607) 78 Ind Cas 564, Kanna Panilhar v. Nanchan
- (1911) 11 Ind Cas 76 (77) 1912 Pun Re No 15, Saif-ud-din v Hansraj. (1932) A I R 1932 Lah 47 (48) 131 Ind Cas 119, Abdul Rahman v Mt. Chhajji (Suit for ejectment of non-proprietor in the Punjab from his site is governed by Art 144 and not by Art 120)
- (1926) A I R 1926 Cal 910 (911) 94 Ind Cas 342, Keshab Lal v Bholanath (A suit which is in essence one for declaration of title and recovery of possession is not governed by Art 148 but by Art 144)

(1901) 3 Bom L R 682 (684), Balwantrao v Ramhrishna.

(1922) A 1 R 1922 Mad 369 (371) 70 Ind Cas 317. Linga Munisami Redds v Gotindasami Naicken (Smits by some copirreners for possession of property sold by other coparecners are governed by Art 144 and not by Art. 127.)

Arts. 142 & 144 Note 3 It is not always the form of the relief claimed that will determine the real character of the suit. The question in each case is what in substance the plaintiff claims. Where A claimed to be a trustee of a mutt and as such entitled to possession and prayed that he might be enabled to collect the rents and profits from the hands of a Receiver appointed by the Court, it was held that the suit was one for possession within the meaning of these Articles. A suit for a declaration that a pathway was a public pathway and for an injunction to remove an obstruction thereto was regarded as a suit for possession within the meaning of Article 144. A a suit for removal of beams constructed by the defendants in such a manner as to overhang the plaintiff's land, was regarded as a suit for possession governed by the twelvo years' period of limitation. Eee also Note 67 infra and the undermentioned cases.

- (1895) 1895 Pun Re No. 52, Hafiz Karım Balsh v. Mt. Begam Jan.
- (1893) 16 Mad 311 (316). 3 Mid L Jour 144, Sundaram v. Seethammal. (Substantial rehef claimed recovery of land and not cancellation of the deed obtained by fraud — Article applicable is Art, 144 and not Art, 91.)
- (1917) A I R 1917 Mad 254 (255): 33 Ind Cas 436, Velligonda Reddy v. Andra Narayya. (Art. 144 and not Art. 44 applies in the case of transfer of minor's property by authorised or de facto guardian which is void ab united.)
 - (1918) A I R 1918 Mad 1938 (1939) ; 40 Ind Cas 418, Thrupathi Raju v. Venkata Raju.
- (1014) A I R 1014 Mad 608 (700): 24 Ind Cas 246, Kunhanna Shetty v. Timmaju. (Suit by aliayasanihana family to recover properties alienated by caman, not keing a suit to set aside an instrument, is governed by Art. 144 and not by Art. 91.)
 - (1935) A I R 1935 Mad 709 (712): 158 Ind Cas 121, Chennamma v. Mangamma.
- (1890) 1890 All W N 115 (116), Ajuba Begam v. Natir Ahmad. (Allenation by one here not binding on another—Suit by latter against altence for possession not governed by Art. 91, but by the 12 years' rule)
- (1908) 35 Cal 551 (560); 25 Ind App 98; 10 Rom L R 590; 5 All L Jour 290; 12 Cal W N 562; 7 Cal L Jour 528; 14 Bur L R 199; 18 Mad L Jour 277; 4 Mad L Tim 12; 4 Low Bur Rul 266 (P C), Petherperimal Chetty v. Munandy Serva.
- (1920) A IR 1920 Pat 538 (539) : 59 Ind Cas 390, Ram Brich Singh v. Mt. Songhari Koer.
- (1907) 11 Oudh Cas 316 (319), Balbhaddar Singh v. Jawahir Singh.
- 13. (1929) A I R 1929 Mad 313 (317): 118 Ind Cas 481, Ramaswami v. Govindammal.
- 14. (1919) A I R 1919 P O 62 (68): 43 Mad 253: 46 Ind App 204: 53 Ind Cas 288 (P C). Arunachalam v. Yenhalachalanathi.
- 15. (1921) A I R 1921 Cal 405 (406); 69 Ind Cas 910, Harish Chandra v. Pran Nath.
 - 16. (1879) 1879 Bom P J 27, Nahalchand v. Magan.

٠.

17. (1934) A I R 1931 Bom 140 (143): 151 Ind Cas 156, Goundlal Manchlal v. Manchchorl. Spunning and Wearing Mills Co. (A suit for the recovery of powerson of land on declaration of plantiff; right thereto on the basis of an award cannot be regarded as a suit for the specific control of the control of the specific control of the control of the specific control of the control o

Notes 3-4

A suit for possession does not invariably mean a suit for actual Arts, 142 & 144 physical possession. It only means a suit for such possession as the property is capable of. In a sunt for the recovery of certain endowed properties wrongfully alienated by one of the rahizatdars, which were in the possession of occupancy tenants, relief by way of actual possession was out of the question and the only relief that could be claimed was the right to collect the rents. Where in such a case the plaintiffs claimed a declaration that they were entitled to collect the rents and an injunction restraining the defendants from collecting them, it was held that the suit must be regarded as one for possession.18

4. Suit on possessory title. - It is an important principle that possession by itself is a substantive night recognized by law and has legal incidents and advantages attached to it apart from the true owner's title.1 It is a heritable and transferable right2 and a person in possession can sue for a declaration of his right thereto or for an injunction as against any person threatening to infringe it.3 It is prima facto evidence of title against all persons except the true

(1935) A I R 1935 Mad 419 (452), Rajagopala Naidu v Ramasubramaniya Ayyar (Suit for possession of office which is not hereditary - Article 120 applies)

(1900) 23 Mad 593 (536) : 10 Mad L Jonr 208, Sornatalli Ammal v. Muthayya Sastrigal. (Plaintiff declared entitled to certain land under award - Suit to recover by plaintiff is governed by Article 144, and

not Article 113.)

(1927) A I R 1927 Nag 400 (401): 105 Ind Cas 286, Narayan v. Lazman Rac. (Suit by an owner for possession of his wall which has been deliberately encroached upon and built upon by the defendants is essentially one for possession, and the incidental fact that under the law applicalla to such a case in India it is usual to give to the defendants an opportunity of removing the building, they have constructed on the land encreached upon, in no way makes the suit one for injunction)

18. (1933) A I R 1933 Bom 26 (29) 141 Ind Cas 103, Narayan Balwant v. Dattatraya Ramchandra,

Note 4

1, (1899) 23 Mad 179 (182), Muslapha v Santha, (Citing Policek and Wright on possession)

2, (1904) 27 All 169 (171) · 1 All L Jour 625 : 1904 All W N 222, Pahlwan

Singh v Ram Bharose,

(1907) 29 All 52 (60) 3 All L Jone 775 1906 All W N 264, Shr: Gopal v. Ayesha (Heritable right - But the heirs must have entered into possession and retained possession at the time of trespass by defendant.)

(1919) A 1 R 1919 All 43 (44) 54 Ind Cas 398, Bazmır Khan v Rustam Khan (Heritable)

(1873) 20 Suth W R 114 (115) 11 Beng L R 237, Brandabun Chunder Roy v Tarachand Bindopadhya

(1930) A I R 1930 Lah 220 (220) : 117 Ind Cas 904. Mt Mansa Debi v. Sansaru (Heritable) (1908) 11 Oudh Cas 337 (339, 340), Wazer-un-nisa Begum v. Wazer Ali (Do)

(1907) 1907 App Cas 73 (79) . 76 LJP O 19 95 L T 896 23 T L R 232. Perry v. Clissold

(1865) LR1QB1(6) 35 LJQB17 11 Jnr (NS) 925 13 LT 251 W R 26, Asher v. Whitlock

(1877) 6 Ch D 696 (704, 705) 46 L J Ch 572 25 W R 768, Ex parte Winder. 8 (1915) A I R 1915 Mad 29 (30) 37 Mad 298 25 Ind Cas 894, Anyapparana v Secretary of State.

Arts. 142 & 144 owner. The following passage from Salmond on Jurisprudence may Note 4 be usefully referred to in this connection:

"The possessor of a thing may be presumed to be the owner of it and may put all other elamants to proof of their title.... Eveo in respect of property already owned, the wrongful possession of it is a good title for the wrongdoer as against all the world except the true nwner. Possession is of such efficacy also that a possessor may, in many cases, confer a good title on another even though he has none himself.... A wrongful

- (1934) A I R 1934 Mad 274 (274): 148 Ind Cas 631, Ramalinga v. Anthonimuthu (Even though plaintiff himself was a trespasser.)
- (1910) 6 Ind Cas 266 (266) 34 Mad 173, Kondappa Rajan v. Suryanarayana. (Enjoument of a water course.)
- (1891) 1891 Bom P J 123, Janu v. Mahadu.
- [See also (1896) 20 Bom 798 (801), Gangaram v. Secretary of State.] 4. (1893) 20 Ind App 99 (106) 20 Cal 834 6 Bar 305 17 Ind Jur 321 (P C), Ismail Artif v. Mahomed Ghouse.
- (1900) 25 Bom 287 (303): 2 Bom L R 1111, Hanmanirav v. Secretary of
- State.
 (1906) 8 Dom L R 96 (98), Hari v. Dhondi, (Prior legal possession is evi-
- dence in itself of ownership.)
 (1881) 7 Cal 591 (593): 9 Cal L R 164, Mohabeer Pershad Singh v. Mohabeer
- Singh. (1882) 9 Cal 130 (181): 11 Cal L R 293 . 5 Shome L R 34, Erfaza Hossem v.
- Bany Mustry. (Prior possession is good title against dispossessor.)
 (1898) 5 Cal W N 234 (239). Faslar Rahman Chowdhry v. Raj Chunder
- Sen. (Previous possession and decree in a provious said negativing the delendant's title is sufficient proof of plaintiff's title against defendant.) (1867) 8 Suth W R 336 (387), Khajah Enactoolla Choudhry v. Kishen Soon-
- der Sarma. (1869) 12 Suth W R 472 (473), Gour Paroy v. Wooma Sundurce Debia.
- (1917) A I R 1917 Cal 797 (798) : 35 Ind Cas 885, Ram Rristo v. Narendra
- Keshore. (1922) A I R 1922 Cal 199 (199): 50 Cal 23: 74 Ind Cas 283, Naba Kishore
- v. Pora Beua. (1930) A I R 1930 Cal 113 (124); 123 Ind Cas 250; 57 Cal 170, Currimbhoy and Co. v. L. A. Creet.
- (1905) 28 Mad 69 (71), Nawab Azajuddin Alikhan v. Secretary of State.
- (1925) A I R 1925 Nag 3C3 (3G4) . 87 Ind Cas 1000, Deorao v. Vathal.
- (1929) A I R 1929 Nag 318 (319) . 119 Ind Cas 701, Kasturchand Bhikam-chand v. Atmaram.
- (1933) A I R 1933 Nag 202 (201): 142 Ind Cas 493: 29 Nag L R 187, Mt. Manju v. Gulab Raa. (Possession can however ripen into prescriptive title affect twelve years.)
- (1933) A I R 1933 Nag 274 (276): 180 Ind Cas C79: 30 Nag L R 18, Mt. Jijihai v. Zabu. (1930) A I R 1930 Oudh 181 (190): 110 Ind Cas 872, Khushwagi v. Jagan-
- nath Prasad.
- (1916) A I R 1916 Tet 172 (173) 38 Ind Cas 797 : 2 Fat L Jour 61, Haradhan Mandal v. Israr Das
 (1920) A I R 1920 Fat 814 (415) 57 Ind Cas 320, Apudhya Singh v. Auadh
- Bihari Das. (1919) A 1 R 1919 Upp Bur 21 (22) . 50 Ind Cas 575 : 3 Upp Bur Rul 125,
- Nga Tha Zan v. Sunder Singh. (1910) 6 Ind Cre 806 [608] (Cal). Shama Charan Roy v. Surja Kanta.
- (1001 ting correctness of previous cases such as 26 Cal 279.)

 (1912) 16 Ind Cas 589 (589) (13nd), Vendatambbah v. Sceretary of State,
 (Rule holds good even against the Secretary of State)

possessor has the rights of an owner with respect to all persons Arts, 142 & 144 except earlier possessors and except the true owner himself...5

"Even a wrongdoer who is deprived of his possession can recover it from any person whatever simply on the ground of his possession. Even the true owner who retakes his own, may be forced to restore it to the wrongdoer, and will not be permitted to set up his own superior title to it. He must first give up possession and then proceed in due course of law for the recovery of the thing on the ground of ownership. The intention of the law is that every possessor shall be entitled to retain and recover his possession until deprired of it by a judgment according to larr."

A person who was in puridical possession but who was dispossessed by another person can, therefore, recover back the possession from such person, on the sole ground of his prior possession, except as against the true owner. The presumption of ownership arising from the present possession of the defendant will be met by the stronger

- (1925) A I R 1925 Cal 635 (636) 86 Ind Cas 835, Chattra Nath v. Babar Alt (Long possession without payment of rent may in certain circum-stances justify the inference of rent-free title) [See also (1936) A I R 1936 Bom 201 (208, 209, 212) , 103 Ind Cas 632, Goundbhas v. Dahyabhas.
 - (1870) 4 Beng L R App 21 (23), Tufan: Singh v. Mt. Durgaban, (1907) 1907 App Cas 73 (79) . 76 L J P C 19 . 95 L T 890 : 23 T L R 232, Perry v. Chisold.]
- 5. Salmond on Jurisprudence, 6th Edition, page 293,
- 6 Salmond on Jurisprudence, 8th Edition, pages 324, 325.
- 7. (1903) 5 Bom L R 225 (227), Rajaram Tuljaram v. Nauchand Tuljaram, (The possession of plaintiff must be juridical possession-Joint possession with defendant is of no avail)
 - (1887) 1887 All W N 55 (56), Muhammad Fuzuf v. Sukk Nath.
 - (1914) A I R 1914 All 54 (55) 36 All 325 23 Ind Cas 532, M A. Gafoor Khan v. Secretary of State (Vendee from vendor without title— Vendee can sue to eject trespasser.)
 - (1884) 8 Bom 371 (375), Krishnarav Feshwant v V. Apazi Ghoti Kar.
 - (1901) 3 Bom L R 246 (248), Bas Fatan V. Emad.
 - (1908) 10 Bom L R 571 (578), Bhaguan Singh Daulat Singh v. Secretary of State
 - (1889) 1889 Bom P J 309, Sahalchand Jetha v Sundarlat Jetha, (Section 9, Specific Relief Act, is no bar to such a suit.)
 - (1924) A I R 1924 Bom 178 (179) 77 Ind Cas 307, Atmaram Bhila v. Balan Raghungth (Plaintiff in possession for over twelve years)
 - (1927) A I R 1927 Cal 931 (932) 100 Ind Cas 278, Sm Gourdala Debi v. Probhas Chandra.
 - (1930) A I R 1930 Cal 113 (124) . 57 Cal 170 123 Ind Cas 259. Currembhon and Co . L A Creet. (1867) 8 Suth W R 386 (387), Khajah Emaetoollah Chowdhry v. Kushen

Sunder Sarma (Such a suit is not barred by Section 9, Specific

- Relief Act) (1902) 1902 Pun Re No 78 1902 Pun L R No 137, Abdul Hamid v. Sar-
- buland Khan (1927) A 1 R 1927 Lah 11 (14) 97 Ind Cas 369, Labh Singh v Ahmad Shah.
- (1862) 1 Mad H C R 85 (89), Doe. d Kullammal v Kuppu Pilla: (1915) A 1 R 1915 Mad 345 (348) 25 Ind Cas 109, Ganapathy Mudali v. Venhatalahshmi Narasayya.
- (1921) A I R 1921 Mad 642 (643) 62 Ind Cas 396, Futhdinga Padayachi y Ponnusuami Padayachi.

Note 4

Arts, 142 & 144 presumption of ownership arising in favour of the plaintiff from prior possession.8 In Doe D. Harding v. Cooke, Park, J., observed as follows:

> "We alter no rule of law by deciding in favour of the lessor of the plaintiff. He has shown a presumptive title, arising out of twenty-three years' possession. The defendant sets up a later possession of ten years. There is presumption against presumption, which throws the defendant upon establishing, if he can, a title of a higher description."

- (1932) A I R 1932 Mad 82 (33): 135 Ind Cas 910. Narayanappa v. Hanumanthappa.
- (1914) A I R 1914 Nag 55 (56, 57) : 10 Nag L R 188 : 27 Ind Cas 506, Sambhasheo v. Mahadeo.
- (1925) A I R 1925 Nag 82 (32) . 78 Ind Cas 722, March v. Sitaram.

1 Ali Khan. r v. Pragi.

- (1917) A I R 1917 Pat 546 (547) : 39 Ind Cas 458 : 2 Pat L Jone 280, Sahodra Kuer v. Gobardhan Tsuars, (Section 9, Specific Relief Act, is no bar.)
- (1920) A I R 1920 Pat 814 (815) : 57 Ind Cas 320. Ajodhua Singh v. Awadh Bihars Das.
- (1929) A I R 1929 Pat 601 (602) : 119 Ind Cas 906 : 8 Pat 351. Ranfit Singh v. Jhors Singh.
- (1937) A I R 1937 Pat 418 (422) : 171 Ind Cas 317, Shiv Saran Ras v. Sukhdeo Ras.
- (1905) 3 Low Bur Rul 27 (28), Watha v. Pe Illaw. (1927) A I R 1927 Rang 203 (204) : 5 Rang 154 . 102 Ind Cas 696, Ma Pwa Zon v. Ma Pan I.
- (1909) 2 Ind Cas 202 (203) (Cal), Dens Madhab Christian v. Raf Chandra Pal. (Tenant dispossessed by trespasser - Sunt by tenant for posses-
- sion.) (1909) 3 Ind Cas 770 (771): 33 Bom 499, Javanji Jamshetji v. Burjorji
- Naserwanji. (1900) 4 Ind Cas 216 (217) (Bom), Bala Eushaba v. Abai Amrita Vanhmode. (1911) 9 Ind Cas 595 (595) (Mad), Gounda Padayachi v. Doraisams Pada-
- wachs. (1911) 11 Ind Cas 91 (95) (Ondb), Hub Lal v. Jageshar.
- (1911) 11 Ind Cas 537 (539) (Ondh), Ramson Khan v. Muhammad Yahub
- (1912) 15 Ind Cas 613 (614) (Mad), Kalyanam Basacanya v. Alaham Mallappa (1926) 97 Ind Cas 369 (372) (Lah), Labh Singh v. Ahmad Shah.
 - (See also (1917) A J R 1917 Pat 507 (508) : 39 Ind Cas 26. Chandi Misser v Narasingrou.
 - (1924) A I R 1924 Pat 709 (710): 78 Ind Cas 228, Abal Abir v. Basmath Das.
 - (1911) 12 Ind Cas 583 (593) (Mad), Venkatachala Asyangar v. Chinna Goundan (No title in plaintid or defendant - Plaintiff bad cersed to be in possession before defendant occupied - Plaintiff
 - cannot claim tenefit of possessory title) (1920) 67 Ind Cas 918 (919) (Lah), Sidhu v. Dhanna. (Suit for damages for cutting of trees claimed by plaintill as in his posscision)
- (1907) 1907 App Cas 73 (79) 76 L J P C 19 : 95 L T 890 : 23 T L R 232, Perry v. Clissold.] 5. (1992) 15 Mad 315 (321) 2 Mad L Jour 159, Secretary of State v. Baratti
- Han (Following (1631) 7 Bing 316, Doe. d. Harding v. Cooke.) 0. (1931) 33 R R 503 (504, 505) . 7 Bing 316 : 5 Moore & Pyne 191 : 9 L J C P 118.

The Legislature has, under Section 9 of the Specific Relief Act, Arts. 142 & 144 Note 4 Note 4 Section 9 of the Specific Relief Act, Arts. 142 & 144 Note 4 Section 14 Section 14 Section 14 Section 14 Section 14 Section 14 Section 15 Section 14 Section 15 Section 1

Suits for possession based on prior possession and dispossession are generally referred to as suits based on possessory title, as distinguished from suits based on proprietary title ¹¹ If the plaintiff proves prior possession and dispossession within six months of the suit, and such dispossession is otherwise than in due course of law, he will be entitled to recover possession notwithstanding the defendant may be the true owner. In other words, the plaintiff will succeed irrespective of the question of proprietary title. ¹² In other cases the suit would be governed by Article 142 and the plaintiff will be entitled to succeed as against all persons except the true owner. It would be therefore for the defendant in such cases to show that he has got a better title to the property than the plaintiff. ¹³

¹⁰ See Notes to Article 3 ante.

¹¹ Salmond on Jurisprudence, 8th Edition, page 325 (1914) A I R 1914 All 54 (35). 36 All 51: 22 Ind Cas 622, Umrao Singh v. Ramj. Das.

^{12. (1903) 5} Bom L R 264 (266, 267), Als v. Pachubibs.

^{(1902) 1902} Pun Re No. 78: 1902 Pun L R No. 187, Abdul Hamid v. Sarbuland Khan

^{(1903) 26} Mad 514 (516, 517) 13 Msd L Jone 146, Narayana Rao v. Dharmachar (But a decree in such a suit will not be res judicata on the question of title)

^{(1894) 4} Mad L Jour 25 (Jour) critical note on (1893) 20 Cal 834 (P C), Ismail Ariff v Mahomed Ghouse.

^{13. (1690) 12} All 46 (50) 1688 All W N 33, Lachho v. Har Sahas.

^{(1900) 25} Bom 287 (294) 2 Bom L R 1111, Hanmantrav v. Secretary of State. (Per Jenkius C. J., Ranade J. dissenting)

^{(1903) 5} Bom L R 264 (206), Ale v. Pachubib. (Defendant cannot succeed if he merely sets up title in a third person from whom he does not derive his right.)

⁽¹⁹³⁶⁾ A I R 1936 Bom 201 (209) · 163 Ind Cas 632, Govendbhas Lallubhas v. Dahyabhas Nathabhas (Do.)

⁽¹⁹³³⁾ A I R 1933 Pat 6 (17) 11 Pat 701 · 141 Ind Cas 157, Chaturbhuj Singh v. Saradacharan Guha. (Do)

⁽¹⁸⁸⁹⁾ Il Cal L R 183 (194), Brops Sunder Gessens v Kollash Chunder Kur (In a unit for possesson, it was found that the plaintiff had been some eleven years in possesson until he was wrongfully outsed by the defendant Held, that the defendant was bound to prove his title and that he could not be allowed to take advantage of his own yrongful act in order to shift the barden of proof apon his opponent)

⁽¹⁹²⁷⁾ A I R 1927 Mad 1185 (1186) · 108 Ind Cas 194, Maruthappan Asars v. Marumuthu Asars

⁽¹⁹³⁰⁾ A I R 1930 Oudh 374 (376) 126 Ind Cas 675, Sohan Lai v Mahomed Hussaum (It is no doubt true that a plaintiff can be given a decree for possession on the basis of his possessory title even in caves other than

There have been, however, a number of cases in which it has been held that, apart from Section 9 of the Specific Relief Act, 1877, a suit will not he at all on a possessory title. It is submitted that the latter view is imposed to the general trend of opinion and cannot he accepted as correct on principle. In Ismail Ariff v. Mahomed Ghouse, I where the plaintiff sued for a declaration of title on the ground of his prior possession, their Lordships of the Privy Council observed as follows:

"The possession of the plaintiff was sufficient evideoce of title as owner against the defendant. By Section 9 of the Specific Rehef Act (Act 1 of 1877), if the plaintiff had beco dispossessed otherwise than in due course of law, he could by a suit instituted within six months from the date of the dispossession, have recovered possession notwithstanding any other title that might be set up in such suit. If he could thus recover possessio from a person who might be able to prove a title, it is certainly right and just that he should be able, against a person who has no title and is a more wrongdoer, to obtain a declaration of title as owner, and an injunction to restrain the wrongdoer from interfering with his possession."

_	(1996) 1996 App Cas 569 (575) : 75 L J P C 109 : 95 L T 568, Emmerson v
	Maddison, (Defendant who takes possession against plaintiff prove-
	title-Plaintiff cannot succeed on the ground of prior possession.)

- (1918) A I R 1918 Bom 153 (153) . 42 Bom 357: 45 Ind Cas 550, Bapufi Narayan v. Bhagwant Baluant.
 - (1932) A I R 1932 Oudh 122 (122) : 186 Ind Cas 256, Zahida Degam v. Mumtas Ali Khan. (1883) C 43 89 (41): 11 Cal L R 842, Debichurn Baido v. Issur Chunder
 - Manjee.
 - (1899) 17 Cal 256 (200), Purmeshur Chowdhry v. Brifo Lall Chowdhry, (1906) 3 Cal L Jour 26 (8. K.).
 - (1906) S Col W N 158 (160), Shama Churn Roy v. Abdul Kabeer.
 - (1868) 9 Soth W R 602 (605), Kalee Chunder Sein v. Addoo Sheikh. (The rule that "ample possession is conclusive evidence as against a wronge doer" is not applicable when title is necessary to complete the plain-
 - tiff's tifle to sue) (1809) 11 Suth WR 447 (447); 3 Beng L R App 44, Lakhs Kamar v. Ram Dutt Chouchry.
 - (1917) A. J. R. 1917 Col. 469 (478): 86 Ind. Cas 890, Ramchandra Sul. v. Ramanman, Dasi.
 - (1918) A I R 1918 Cal 532 (533): 42 Ind Cas 881, Gnanendra Nath v. Mohendra Mohmi Debya.
 - (1921) A I R 1924 Cal 850 (853): 82 Ind Can 386, Inanendranath Mustaphi v. Dukhsram Santra, (Obster.)
 - (1925) A I R 1925 Cal 1925 (1926): 89 Ind Cas 180, Year Mamud Mondal v. Paomocha Sarkar.
 - (1931) A I R 1934 Cal 561 (562): 61 Cal 419: 150 Ind Cas 723, Kiran Chandra v. Presunno Kumar.
 - (1925) A I R 1925 Pat 625 (666): 4 Pat 510: 87 Ind Cas 519, Hitendra Singh v. Damethurar Singh. (Poster, J., contra.)

ı İs

15 (1994) 20 Ind App 99 (106, 107). 20 Cal 834, 17 Ind Jur 821; 6 Sar 805 (P.C).

Nots 5

5. Suit on proprietary title. - It would follow from what Arts. 142 & 144 has been stated in Note 2 aute, that a suit for immovable property would not be governed by Article 144 unless either the plaintiff's title came into existence while the defendant was in lawful possession, or the defendant's entry on the land was, at the date of the entry, consistent with the title of the pluntiff. It is clear, therefore, that the suit for possession of immovable property contemplated by Article 144 is one by a person entitled to possession as ounce against a person in possession without title 1 In Chhatia Kumari Devi v. Mohan Bilram Shah,2 their Lordships of the Privy Council observed that Article 144 "is applicable only to a possessory suit by the owner of the property elaimed against a person holding adversely to him without title " It was consequently held that a suit by a person who is not the owner, as for example, a person entitled to sue for the breach of a contract to convey properties or a beneficiary under a trust, is not governed by Article 144.

There is a difference of opinion as to whether Article 142 is confined to snits for possession on the ground of possessory title, or whether it is applicable to all eases of dispossession, whother the plaintiff is suing merely on his possessory title or on his proprietary title also. The general trend of opinion is that the Article will apply to all cases of alleged dispossession, whether the plaintiff sues on his proprietary or on his possessory title 3 The contrary view that the

- (1931) A I R 1931 P C 196 (199]; 58 Ind App 279: 10 Pat 851; 183 Ind Cas 705 (P C), Chhaira Kumar: Devr. Mohan Bikram Shah.
 - (1938) A I R 1938 Nag 835 (347) : 177 Ind Cas 6 (F B), Asaram v Ludheth-
 - (1936) A I R 1936 Pat 147 [147] . 161 Ind Cas 585, Mahomed Tusuf v. Mohamad Waheed.
 - (1914) A I R 1914 Low Bur 241 (243) . 6 Low Bur Rul 64 . 24 Ind Cas 911. Secretary of State v. Ma Due.
 - [See also (1912) 15 Ind Cas 285 (286): 1912 Pun Re No. 124, Achar Singh v. Badhau a Singh.
- 2, (1931) A I R 1931 P C 196 (199] : 58 Ind App 279 : 10 Pat 851 : 133 Ind Cas 705 (P C).
- (1888) 16 Ind App 23 (24, 25, 26): 16 Cal 473: 5 Sar 321 (P C), Mohima Chunder Mozoomdar v. Mohesh Chunder Neogi. (Suit was based on title and dispossession-Art. 142 was applied]
 - (1934) A I R 1934 All 862 (365, 367] : 56 All 755 : 152 Ind Cas 12, Kunja v. Nayaz Husain.
 - (1934) A I R 1934 All 993 (995) : 57 All 278 : 152 Ind Cas 1 (F B), Bundhuachal Chand v. Ram Gharib Chand.
 - (1936) A I R 1936 Pat 147 (147] · 161 Ind Cas 585, Mahomed Fusuf v. Mohamad Waheed. (Facts show that Art 142 was applied to the case)
 - (1926) A I R 1926 Mad 181 (181, 182): 91 Ind Cas 451, Eurpuswami Mudaliar v. Chokalinga Mudaliar.
 - (1935) A I R 1935 Lah 507 (508) : 157 Ind Cas 399, Kaur Sain v. Gulab. (1926) A I R 1926 Cal 1166 (1167] : 97 Ind Cas 1003, Birendra Nath Roy v. Satis Chandra Jourdar.
 - (1925) A I R 1925 Nag 370 (371] : S7 Ind Cas 1023, Singuji v. Gambhirfi. (1915) A I R 1915 Bom 92 (93]; 39 Pom 335; 28 Ind Cas 24, Subbarra Shankareppa v. Venkappa Gelappa.

Article is confined to suits on possessory title and cannot apply to suits based on proprietary title, even though it is a case of dispossession,* is, it is submitted, not correct. There does not seem to be anything in the Article itself limiting its applicability to suits on possessory title only. In Nawab Muhammad Amanullah Khan v. Badam Singh,* the plaintiffs were proprietors of certain lands and bad been dispossessed by the defendants. They thereupon sued the defendants for possession. It was hold by their Lordships of the Privy Council that Art. 142 applied to the case. Their Lordships observed:

"Whether any proprietary right may bave existed is not the question It is whether there has been a dispossession or a discontinuance, which there clearly was. No doubt the proprietary right would continue to exist until by the operation of the law of limitation it had been extinguished; but upon the question whether the law of limitation applies, it appears to be clear that it comes within the terms of Article 142, and if there has been any doubt in the mind of the Courts in the Punjah as to what was the effect of the law of limitation in cases of this description, it seems to have arisen from the introduction of some opinion that there must be what is called adverse possession. It is unnecessary to enter upon that inquiry. Article 144 as to adverse possession only applies when there is no other Article which specially provides for the case.

"In this case their Lordships think that Article 142 does provide for the case, and that the suit is barred by the law of limitation."

6. "Immoveable property." — The expression "immoveable property" has not been defined in this Act and consequently is to be interpreted in the light of the definition thereof given in the General Clauses Act, 1897. Under that Act "immoveable property" has been defined as including land, benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. Where the question concerns the rights of Hindus, it has been held by their Lordships of the Privy Council, that the expression "immoveable property" should be taken to include what ever the Hindu Law classes as immovable, although not such in the

 ⁽¹⁹³³⁾ A I R 1933 Nag 274 (276): 30 Nag L R 18: 150 Ind Cas 679, Mi-Jiphas v. Zabu.

⁽¹⁹³⁷⁾ A I R 1937 Sind 226 (227, 228) 170 Ind Cas 621: 30 Sind L B 472, Wadero Warssdino v Bhas Pursumal.

⁽¹⁹²⁹⁾ A I R 1929 All 753 (753, 754) 19 Ind Cas 6 · 51 All 1042, Kanhasya Lal v. Girwar. (Overruled by A I R 1934 All 993.)

⁽¹⁹²⁹⁾ A I R 1929 Lah 596 (597) 127 Ind Cas 8, Mohammed Far v. Mohammad Far.

^[1934] A. I. R. 1934 Lah 245 (247) . 144 Ind Cas 72, Als Akbar v. Rokha.
[See (1933) A. I. R. 1933 All 775 (777) 55 All 209 : 143 Ind Cas 497,
Kallan v. Mohammad Nabs Kham.
(Must be taken to be over-rolled by A. H. 1934 All 1933]]

^{5, (1889) 16} Ind App 148 (160, 151) · 17 Cal 137 ; 1890 Pun Re No 23 : 13 Ind Jur 330 ; 5 Sar 412 (P.C).

Note 6

ordinary acceptation of the word.1 "The question must," observed Arts. 142 & 144 their Lordships, "in every case be whether the subject of the suit is in the nature of immovable property, or of an interest in immovable property; and if its nature and quality can only be determined by Hindu Law and usage, the Hindu Law may be properly invoked for that nurpose."

Applying this principle it was held in the undermentioned cases? that a right to a cash allowance granted for the support of a Hindu temple out of Antastha Sadilrar (s. c. extra assessment levied to meet local charges) and to three khunds of rice to be levied from certain mahals, under a sanad granted by the Peshwa, was immovable property or an interest in immovable property within the meaning of clause 12 of Section 1 of the Act of 1859.

The following bave all been held to be immovable property:-

- 1. Right to a hereditary office with emoluments attached thereto 3
- 2. Right to levy certain tolls on paddy exports granted by the Peshwas, called Tipnis Pansare
- Right to brit offerings 5
- 4. Right to officiate at funeral ceremonies of Hindus called Brit Jajmanka 6
- Right to Nankar allowance out of a particular village.
- 6. Standing trees 6

- (1878) I Ind App St (50, 51)
 13 Beng L R 25t
 21 Suth W R 178 · 10 Bom H C R 281
 3 Sar 306 (P C), Maharana Fettehsanga v. Dessas Kalluarenja (G Bom H C R A C 3 137, Approved) [See also (1872) 9 Bom H C R 99 (112), Balmantrao v. Pursholam,
 - (Term "immoveable property" is not a cocabulum artis of the English law ! (1884) 10 Cal 697 (708), Gowingth Choben v. Bhugwat Pershad.]
- 2, (1892) 6 Bom 546 (559) : 6 Ind Jur 648 (F B), Collector of Thana v. Hars
- Sitaram.
 - (1880) 5 Bom 322 (332), Collector of Thana v. Krishnanath Govind
- 3, (1872) 9 Bom H C R 99 (113), Balwantrao v. Purshotam. (1874) 1874 Bom P J 295 (296), Shidramshet v Huchava,
 - (1886) 10 Bom 149 (151), Lahshman Das v Manohar Genesh.
- (See also (1869) 6 Bom H C R 137 (139), Krishnabhat v. Kapabhat.) 4. (1909) 2 Ind Cas 489 (489) 83 Bom 373, Krishnaji Pandurang v. Gajanan Balwant
- 5. (1909) 1908 Pun Re No 34 · 1908 Pun L R No 163 . 1908 Pun W R No. 96, Mohan Lal v. Janks
- 6. (1883) 10 Cal 73 (74) 13 Cal L B 263 : 8 Ind Jur 197, Raghoo Pandey v. Kassey Paren.
- 7. (1916) A I R 1916 Oudh 129 (132) . 19 Oudh Cas 49 33 Ind Cas 461, Deputy Commissioner, Fyrabad v. Jagnvan Balsh Singh.
- 8. (1895) 19 Bom 207 (208), Sakharam Mulshet v. Vishram.
 - (1831) 16 Bom 353 (356), Bapu v Dhonds. (Possession of mango trees.)
 - (1881) 3 All 435 (437) . 1881 All W N 9 5 Ind Jur 652, Jagram Bib: v. Ganeshi.
 - (1867) 2 Agra 300 (301), Mt. Ghufoorun Bebee v Khwajeh Musiuhedeh.
 - (1884) 1884 Pun Re No 112, Japual Smah v. Ladha

- 7. Materials of a standing house.0
- 8. Jagir income arising out of land. 10
- The rights reserved to patnidars and comprehensively included in the word "contract" in Section 51 of the Bengal Chaukidari Act (6 of 1870).11

The fellowing are not immovable property:-

- The proceeds of the sale of immovable property.¹³
 - 2. A pala or turn of worship,13
- 3. An agreement to grant a lease. 14
- 4. Arrears of land revenue or cess.15
- 5. Money payable as marriage dues to the holder of a hereditary office in a temple.16
- 6. Right to have one's name entered in the Revenue Registers.17
- Right of exclusive worship of idol.¹⁸

There is a difference of opinion as to whether the space above a land belonging to the owner of the land is immovable property which can be acquired by adverse encroachment thereon for a period of twelve years. According to the High Courts of Allahabad and Madras, an encroachment on such space is an adverse possession of immovable property.10 The Bombay High Court has expressed

```
(See also (1872) 4 N W P H O R 167 (169), Hancoman Pershad v.
        Surubject Singh. (Right to recover value of trees cut down by defendant is not an interest in immovable property.)
```

(1909) 1 Ind Cas 903 (904) : 5 Nag L R 21, Parmanand v. Birkhu. (A right to collect lac from trees)

(1936) A I R 1936 Pat 66 (67) : 160 Ind Cas 1054, Mots Sangh v. Deoks Smah. (1921) A I R 1921 Pat 482 (482) 63 Ind Cas 264, Bens Prasad v. Sura:

Smah. (1914) A I R 1914 Low Bur 241 (243) . 8 Low Bur Rul 64 : 24 Ind Cas 911. Secretary of State v. Ma Dwe.]

9, (1923) A I R 1923 Lab 150 (151); 73 Ind Cas 705, Shanchi Khan v. Karam Chand. (1875) 8 Mad H C R 100 (102), Narayana Pillai v. Ramasawmy Thavu-

tharan. 10, (1894) 1894 Pun Re No 4, Ram Pershad v. Kishen Singh

11. (1918) A I R 1918 P C 85 (86, 87); 46 Cal 173; 45 Ind App 162; 48 Ind Cas 262 (P C), Maharaja Ranjit Singh v. Maharaj Bahadur Singh.

12. (1918) A I R 1918 Pat 548 (551) . 46 Ind Cas 627, Radha Kishan v. Nauratan Lal 13. (1919) A I R 1919 Cal 671 (672) 46 Cal 455 : 47 Ind Cas 25, Narasingha

Bana Gosnams v Prolhodman Tevars 14 (1874) 22 Suth W R 287 (287). Ram Sahoy Lall v. Bibec Choubain. (Nor

15. 16

17.

erest

Roy v. Monmohini Dassi. 1 Ind Cas 1094, State of Indore v. conflicting opinions.20

7. Interest in immovable property. — The scope of Article 144 seems to be wider than that of Article 143. The latter is limited to suits for possession of unmovable property; the former includes, in addition, suits for possession of unterests in immovable property.\(^1\) A suit for the possession of unterests in immovable property would be governed, not by Article 149 bit by Article 144.\(^2\) This, it is conceived, would be so even if the case is one of dispossession of the plaintiff \(^3\) It is also conceived that the interest must, for the purpose of this Article, be such as is capable of being enjoyed by acts of ownership, for unless this is so, there cannot be any adverse presenting of such interest.

In Maharana Fatehsanghji v. Desai Kalianraiji, it was held by the Privy Council that a toda giras haq, i. e. a right to receive an annual payment, the liability for which is not a mere personal liability, but one which attaches to the loandar in whosesoever hands the village may pass, was 'an interest in immovable property' within the meaning of clause 12 of Section 1 of the Act of 1859. The following have also been held to be interests in immovable property:

1 An exclusive right of fishery. It must be coted that a right of fishery which does not exclude the owner or

(1916) A I R 1916 Mad 613 (615) 38 Mad 6 17 Ind Cas 158, Basaveswaraswam; v. Bellari Municipal Council. (See also (1920) 7 Ind. Cas 571 (572) (Nud), Admarayanamma v. Syed

Muriaza Sahib (Plaintiff putting up a buttress and in possession thereof for over twelve years must be deemed to have acquired a title to the site covered by the buttress)

20 (1925) A.I.R. 1925 Dom 335 (337) 87 Ind Cis 1008. Bahadurmal v. Mohanlal (Right to open shutters and maintain weither frames is acquired by adverse possession—It is not an eisement).

(1932) A I R 1932 Bom 221 (224) 199 Ind Cas 459, Chhagantal v Hem-chand (The column of air occupied by a projection over the land of a neighbour is not immovable property or any interest therein within the meaning of Article 144, capable of being acquired by adverse possession.)

(1913) 20 Ind C1s 216 (216) 37 Bom 491, Chhotalal v Mandal (Do)

(1922) A I R 1922 Bom 87 (84) 67 Ind Crs 356 46 Bom 827, Kashibhar Kalidas v Vallabhar Wagibhar.

Note 7

 (1911) 12 Ind Cas 305 (307) (Cai), Lohenath Bulyadhur v Jahama Bibi [See also (1914) A I R 1914 Cai 762 (763) 23 Ind Cas 136 (133), Hom Chandra v Secretary of State)

2 (1911) 12 1nd C1v 305 (307) (C1), Lohenath Bidyadhur v Jahanus Bibi. (1932) A I R 1932 C1 300 (302) 59 C2 344 137 Ind C1s 279, Krishna Nondi's Lohenath Mocherjee.

[See also (1933) A I R 1923 Pat 58 (62) 1 Pat 674 67 Ind Cas 954, Henry Hill & Co v Sheoraj Rai]

3 See the cases cited in Foot-Note (3)

4 (1874) 21 Suth W R 178 (182) 1 1nd App 34 13 Beng L R 254 10 Bom H C R 291 8 Sar 306 (P C)

5 (1932) A I R 1932 Cal 300 (302) 59 Cal 344 137 Ind Cas 279, Krishna Nandi v Lokenath Moohersee.

(1911) 12 Ind Cas 305 (307) (Cal), Lohenath v. Jahania Bibs

Arts, 142 & 144 Notes 6-7

other persons from fishing, is only an easement. (See also Notes to the definition of 'easement' under Section 2 ante.)

- 2. Right to possession and management of saranjam property.7
- Right to collect assessment of lands endowed in favour of a shrine.⁶
- 4. Right of occupancy tenant in the land.9
- 5. Right to parjat, charai and charsas dues.10
- 6. Right to Mulurrari rent.11
 - Right to levy summary cess over land.¹²
- 8. Right to a watercourse. 13
- Right of a zamindar or landlord to recover melwaram from land.¹⁴
- (1930) A I R 1930 Mad 679 (680) . 125 Ind Cas 545, Secretary of State v. District Board of Tanjore.
- (1923) A I R 1923 Fat 58 (62) 1 Pat 674: 67 Ind Cas 954, Henry Hill & Co. v. Sheoraj Rai.
- (1917) A I R 1917 Cal 656 (657) : 84 Ind Cas 841, Madhabchandra Mandal v. Nagendra Nath Sen.
- (1922) A I R 1922 Pat 9 (11) : 64 Ind Cas 346, Henry Hill & Co. v. Sheoraj
- (1927) A I R 1927 Cal 403 (405): 103 Ind Cas 13, Debendra Lal v. Secretary of State.
- (1878) S Cal 276 (279): 1 Cal L R 502, Parbutty Nath Roy v, Mudho Parol, [See also (1927) A I R 1927 Nag 147 (149): 23 Nag L R 16: 100 Ind Cas 438, Manya v, Sutaram, (Grant of a lease for fishing creates
 - an interest in immovable property)
 (1880) 5 Cal 945 (948): 6 Cal L R 269: 3 Shome L R 123, Chundee
 Churn Roy v, Shib Chunder Mundul.]
- 6. (1987) A I R 1937 Nag 88 (89) : 168 Ind Cas 921, Nago v. Mt. Lahani,
- (1885) 9 Mad 285 (303), Strassbramanya v. Secretary of State. (1921) A I R 1921 Bom 417 (418): 45 Bom 80 · 57 Ind Cas 143, Anania v. Gam (Right to take water from another's well is an easement and
- not an interest in immovable property)

 The following cases which held that easiment is an interest in immovable property cannot be regarded as good law "—
- (1882) 5 Mad 253 (255): 6 Ind Jur 465, Karupam Zamindar v. Merangi
- Zommadar.
 (1875) 24 Suth W R 300 (300), Mohunt Deo Surum Poory v. Moonshee
- 7. (1891) 15 Bom 247 (255), Narayan Jaganath v. Vasudeo Vishnu.
- 8. (1933) A I R 1933 Bom 26 (32): 141 Ind Cas 103, Narayan Balwant v. Dattatraya Ramchandra.
- 9. (1876) 1876 Pun Re No 19, Sahib Rai v. Khair Shah.

Mahomed Ismail.

- (1918) A I R 1918 Oudh 181 (183): 21 Oudh Cas 119: 46 Ind Cas 439, Sheara; Singh v Debi Bakhsh Singh.
- 11. (1927) A 1 R 1927 Pat 49 (50) 97 Ind Cas 637, Gopalcharjya v. Bhim Kali. (Gift of mukararı rent—Suit to set aside, is governed by Article 144.)
- (1911) 12 Ind Cas 716 (718). 36 Born 174, Ranmal Singji v. Mahashanhar.
 (1889) 4 O P L R 16 (17), Americally v. Mot. Lall.
- (1937) A I R 1937 Mad 303 (306, 207) · 173 Ind Cas 307, Ohakrapani Rao
 Fenkaladri Appa Rao, (Melwaram right when consisting of imposition of full assessment is interest in immovable property.)
 [See also (1898) 12 Bom 80 (84), Krishnaji v. Vilhalrao, (Right to re-

ceive share of the income and profits from the land of another.)]

As to whether a right to malskana allowance is an interest in Arts. 142 & 144 immovable property, see Note 20 to Article 132, ante. Notes 7-8

Where immovable property is mortcaged under a simple mortgage, or under some other form of mortgage under which the mortgagor is entitled to periodical accounts or payments from the mortgagees, the mortgager's interest is capable of being adversely possessed. In this sense ao county of redemption may be said to be an interest in immovable property which can be acquired by adverse possession.15 Where, however, A usufructuarily mortgages his property to B and A has nothing more than a haro right to redeem vested in bim, cao such right be adversely possessed, and would a suit for a declaration of such right be a suit for possession of an interest in immovable property within the meaning of Article 144? It has been held in the undermentioned cases 16 that it would be so. It is submitted that this view does not seem to be correct on principle. The right is one that cannot be emoved to the sense in which an enjoyment is necessary in order to constitute adverse possession. See the undermentioned cases.17

8. "Plaintiff" in Article 142, meaning of. - Section 2, subsection 8 defines the word "plaintiff" as including any person from or through whom a plaintiff derives his right to sue.18 Where therefore the plaintiff claims a right to property through another and the

- 15 See (1901) 32 Ind App 23 (32) 32 Cal 296 · 9 Cal W N 201 · 2 All L Jour 71 7 Bom L R 1 · 1 Cal L Jour 594 · 8 Sar 734 (P C), Khiarajmal
- [See also (1990) 14 Bom 176 (190), Puttarna v. Timman] 16. (1936) A I R 1936 Oudh 163 (109) 160 Ind Cas 920, Udhaibhan Singh v.
 - Sheoamber Sahar. (1925) A I R 1925 Oudh 658 (660) 87 Ind Cas 208, Annapoorna Koer v.
 - Jageshar Missra.
 - (1914) A.I. R. 1914. Oudh. 253. (254). 17. Oudh. Cas. 294. 25 Ind. Cas. 600, Hubdar Khan v. Gajadhar Chaube. (1992) 6 Cal. W. N. 601. (611), Lalla Ranha Lal v. Mt. Manhs Dibi
 - (1925) A I R 1925 Bom 9 (12) 49 Bom 654 84 Ind Ca3 374, Hanamgouda Shid Gouda v Irgouda Shingouda.
- 17 (1910) A I R 1916 All 79 (80) 38 All 411 34 Ind Cas 171, Kunuar Sen v. Darbars Lal (A right to redeem immovable property cannot be adversely possessed when the right to pos-ession and actual possession is in the hands of the mortgagee)
 - (1935) A I R 1935 All 174 (178) 153 Ind Cas 73, Sheam Lal v Mohamad All (Property in possession of usufructuary mortgagee-Person merely by getting his name recorded in village papers for several years cannot acquire title by adverse possession)
 - (1920) A 1 R 1920 Lah 300 (301) 1 Lah 549 59 Ind Cas 476, Shah Nawaz v Sheish Ahmad (Right to pessession and actual possession in mortgages's hands—Person getting his name recorded in revenue papers cannot be in adverse possession of right to redeem)
 - (1915) A I R 1915 Mad 1150 (1151) 26 Ind Cas 529, Lakshminarayana Iyer v Ulagammal (There can be no adverse possession of any interest in land by a person who does not derive any benefit whatever during the period of the alleged possession)

Note 8

Ia. (1937) A 1 R 1937 Cal 343 (346) 173 Ind Cas 439, Naratiam Den v. Debendra Lal Ahan.

Notes 8-9

Arts, 142 & 144 latter was dispossessed or the possession of the defendant became adverse to the latter, the date of dispossession of the plaintiff or the date when the possession became adverse to the plaintiff, would. for the purpose of these Articles, be the date on which his predecessorin title was dispossessed or on which the defendant's possession became adverse to the predecessor-in-title.1b

> An adopted son does not claim through his adoptive mother, and her dispossession or a discontinuance of possession by her is not one by the adopted son. So also, a reversioner succeeding to an estate held by a limited owner, or a person succeeding to another in the event of a contingency, does not claim through the other. A dispossession of the latter is not a dispossession of the former.2

> 9. "Has been dispossessed or has discontinued the possession."-A dispossession must be distinguished from a discontinuance of possession. In Rains v. Buxton, 1 which was a case arising under Section 3, Chapter 27, 3 & 4, Will, IV, which used words similar to those used in Articlo 142 of this Act, Mr. Justice Fry observed :

"In my view the difference between dispossession and the discontinuance of possession might be expressed in this way-the one is where a person comes in and drives out the others from possession; the other case is where the person in possession goes out and is followed into possession by other persons."

This view has been adopted in numerous cases.2 Thus, where A is in possession of land and B comes on the land and drives out A by

- 1b. (1665) 2 Mad H C R 391 (392), Chandra Chodanghi v. Temmasya. (1874) 21 Suth W R 282 (282), Ahmed Ali v. Hares Chand.
 - (1930) A I R 1930 Cal 474 (475, 476): 128 Ind Cas 201, Bhushan Mondal v.
 - Sarbeshuar Mondal. (1925) A I R 1925 Oudh 729 (730) : 87 Ind Cas 1021, Bhagwan Dan v.
 - Atudhia. (1000) 1 7 D 1000 Det 100 (101) 1 E Det 111 : 00 Ind Con 177 Deten Vo en
 - (1869) 2 Beng L R A C 313 (315), Gobind Chandra Sarma v. Anand Mohan Sarma. (Once adverse possession has started against the predecessor in title of the plaintiff, then plaintiff does not get a fresh cause of action on his being entitled to the property)
 - (1919) A I R 1919 Mad 798 (808) : 41 Mad 749 : 47 Ind Cas 733, The Midnapore Zamındarı Co v. Malayandı Appasamı Naicher.
 - 1. (1905) 2 Cal L Jour 87 (94): 9 Cal W N 795, Harel Chand Babu v. Bijoychand Mahatab.
 - (1912) 16 Ind Cas 365 (367): 40 Cal 173. Prosonna Kumar v. Srs Kantha. (A ghatwal does not claim through his father as his predecessor within the meaning of S. 2, Limitation Act.)

- 1. (1880) 28 W R (Eng) 954 (956) : 49 L J Ch 473 . 14 Ch D 587 : 43 L T 88. '2. (1930) A I R 1930 Cal 247 (248) : 125 Ind Cas 732, Ralhal Das v. Khirode Bandhu.
 - (1925) AIR 1925-Mad 834 (835): 87 Ind Cas 386, Govinda Ramanuja v. Mahomed Esoof.
 - (1919) A I R 1919 Mad 8 (10) 49 Ind Cas 89, Kuppusami Chetty v. Ramiah.

a tortious act, the case is one of dispossession.23 But where, for Arts. 142 & 144 instance, A executes a transfer in favour of B and delivers to him the possession of the property transferred, the ease is not one of dispossession but one of discontinuance of possession by A from the date of the delivery of possession under the transfer.3

Note 9

There are, however, some essential features common to both dispossession and discontinuance of possession.

- 1 In either case there must be a termination of possession on the part of the person who was in possession 4
- 2. It must be followed up by another person's actual possession.6
- (1922) A J R 1922 Cal 224 (225) 67 Ind Cas 1005, Behart Lal v. Nrstvananda
- (1928) A I R 1928 Cal 101 (105, 106) . 107 Ind Cas 95, Mohesh Chandra v. Hemendranath.
- (1920) A I R 1929 Cal 297 (297) 56 Cal 914 , 119 Ind Cas 289, Gava Prasad
- v Bahnamanı (1939) A I R 1939 Nag 7 (9), Meherban Lalls v. Yusufhhan Kallu
- (1938) A I R 1938 Sind 198 (201) 178 Ind Cas 690, Arab Jhanglu v.
- Panjalshah Yakubalishah
- (1926) 4 I R 1926 Pat 130 (197) 5 Pat 80 91 Ind Cas 189, Midnapur Zamındary Co , Ltd . Ram Kanas Single (Mere refusal by the landlord to recognise lease does not amount to dispossession of the tenant, Positive act of dispossession is necessary.)
- (1910) 8 Ind Cas 639 (642) : 35 Bom 79, Vasudeo Atmaram v. Ehnath Dalkrishna
- (1923) A I R 1923 Cal 1 (6) . 50 Cal 49 74 Ind 630, Charu Chandra v. Nahnsh Chandra.
- (1916) A I R 1916 Cal 751 (752) . 31 Ind Cas 242, Brojendra Eishore v. Bharat Chandra.
- (1921) A I R 1921 Pat 36 (36) 57 Ind Cas 717 5 Pat L Jour 592, Madan Mohan Singh v Brig Behart Lal.
- (1921) A I R 1921 Pat 277 (277, 278) 61 Ind Cas 78, Bahadur Als Khan v.
- Secretary of State. (1922) A I R 1922 Mad 59 (61) 45 Mad 370 . 67 Ind Cas 246, Ramah Ramayya v. Kottamma.
- (1897) 7 Mad L Jour 186 (168), Kishnammal v. Pichaunarayyan.
- 2a (1880) 28 W R (Eng) 452 (454) 49 L J Ex.220 5 Ex D 264 42 L T 463 : 44 J P 488, Leigh v Jack
 - (1939) A I R 1939 Nag 7 (9) 1938 Nag L Jour 418 (120), Mcharban Lalla V. Yusufhhan Kallu.
- 3, (1938) A I R 1939 Nag 335 (317) 177 Ind Cas 6 (F B), Asaram v. Ludhesuar.
 - (1918) A I R 1918 P C 180 (181) 46 Cal 694 46 Ind App 60 50 Ind Cas 203 (P C), Rans Kuar Mans Singh v Nanab of Murshidabad (Court of Wards alienating ward's property and alience obtaining possession— Ward afterwards suing to recover property on the ground of the alienation not binding on him-There is discontinuance of possession by the ward on alience obtaining possession under the transfer and the ward must sue within 12 years of such discontinuance)
 - (1932) A I R 1932 P C 55:(55) 59 Ind App2130 11 Pat+272 136 Ind Cas 798 (P C), Bagesuars Charan Singh . Jagarnath Angre,
 - (1906) 29 All 281 (283) 3 All L Jour 16 : 1905 All W N 292, Madho Pam Singh v. Surjan Kunuar.
- 4. See cases cited in Foot-Note (2).
- 5. See cases cited in Foot-Note (2) and Foot-Note (10a)

3 The latter's possession must be adverse to the former.⁶
Termination of possession:

It is obvious that so long as a person continues to do acts of possession on a land he cannot be said to terminate it ⁶ⁿ Mere acts of trespass by the defendant are not enought to show that the plaintiff's possession has terminated if he has been enjoying the property in such manner as it is capable of being enjoyed. "In order to defeat a title by dispossessing the former owner, acts must be done which are inconsistent with his enjoyment of the soil for the purposes for which he intended to use it, and therefore it is necessary to look at the position in which the former owner stands towards the land as well as to the acts done by the alleged dispossessor." The What acts of the defendant are sufficient to establish a termination of the former owner's possession must be judged from the circumstances of the case and from the nature of the property in question. The In Basant Kumar

- 6. (1928) A I R 1928 Cal 118 (119). 105 Ind Cas 869, Gopal Chandra v. Monmohim Dass.
 - (1933) A IR 1933 Pat 6 (16) 141 Ind Cas 157: 11 Pat 701, Chaturbhuj Singh v Sarada Charan Guha. (Dispossession merely means exclusion from possession without consent of the person concerned)
 - (1931) A I R 1931 Rang 40 (48): 8 Rang 556. 129 Ind Cas 511, Maung Sin v. Maung So Min. (Per Brown, J: Possession by leave and license of another person recognising his title is not dispossession or discontinuance of possession.)
 - (1803) 1893 Pun Re No. 104, Sundar v. Mt. Rohonsu. [See also (1935) A I R 1935 All 639 (640) · 157 Ind Cas 696, Kallu v.
- Mt Jayanti.]
 Ga (1922) A I R 1922 Cal 224 (225): 67 Ind Cas 1005, Behave Lal Nands v.
- Nrstyanand Ghose.
 7. (1880) 28 W R (Eng) 452 (454) · 49 L J Ex 220 : 5 Ex D 264 · 42 L T 463 :
 44 J P 488, Leigh v. Jack.
 - (1903) I T C, 514 (516, 517): 3C Cal 23, Ganeda Sundari v. Nalmi Ranjan. (1930) A I R 1930 Oudh 304 (305): 127 Ind Cas 47, Abdul Rahim v. Warr Ah. (Mere planting of trees on another's land does not amount to
 - dispossession nuless there is denial of right of owner.)
 (1913) 20 Ind Cas 79 (80) (Cal), Purna Chandra v. Ananta Keot.
 - (1929) A I R 1929 Lah 71 (71) 109 Ind Cas 657, Mohammad Amm Khan v. Balanda (Collecting cattle on the land or fixing pegs or erecting a platform on it by the defendant will not be sufficient to make the owner out of possession.)
 - (1926) A I R 1926 Pat 130 (135) . 91 Ind Cas 169 : 5 Pat 80, Midnapore Zamindar Co. Ltd. v Ram Kanai Singh.
 - (1925) A I R 1925 Lah 35 (53) '' 97 Ind Cas 30, Minna Lal v. Hamid Ali., (Mere paper dispossession by mutation of names does not amount to dispossession)
 - (1900) 11 Cal W N 186 (189) 4 Cal L Jour 568, Choudhry Shamanund v.
- 7a (1917) A I R 1917 P C 18 (22) : 44 Cal 858 44 Ind App 104 : 40 Ind Cas 337 (P C), Basant Kumar v. Secretary of State.
 - [See also (1907) 35 Cal 961 (971, 972) : G Cal L Jour 735 : 12 Cal W N 127, Jogendra Nath Ras v. Baldeo Das
- (1901) 31 Cal 397 (405), Wals Ahmed Choudhry v. Tota Mea.] 7b (1929) A I R 1929 Cal 297 (297): 35 Cal 914: 119 Ind Cas 289, Gaya Prosad v. Hahyamans Dass. (Where a Hindle widow, who had been enjoying

v. Secretary of State,8 their Lordships of the Privy Conneil observed Arts, 142 & 144 as follows:

Note 9

"'It is impossible', says Lord Halsbury in Marshall v Taylor, 9 to speak with exact precision about the degree of possession or dispossession that will do, unless you have regard, as Loid Justice Cotton said in Leigh v. Jack, 10 to the nature of the property.' An exclusive adverse possession for a sufficient period may be made out, in spite of occasional acts done by the former owner on the ground for a specific purpose from time to time Conversely acts, which prima facie are acts of dispossession. may, under particular encumstances, fall short of evidencing any kind of ouster. They may be susceptible of another explanation, bear some other character or have some other object"

the property as tenant-in common along with her brothers in-law, sued to establish her possession and it appeared that her title had not been denied and that she had been receiving rents and profits, held that there was no dispossession)

(1929) A I R 1929 Cul 417 (417, 418) 120 Ind Cas 104, Profulla Chandra . Rshetra Lat Sinha (Mere beinging of suit for rent against a person in possession is not an attempt to disturb possession of a party.)

(1900) 1 Ch 19 (23) 69 L J Ch 87 81 L T 564 48 W R(Eng) 177 16 T L R 44, Littledale Literpool College (Erecting and locking gates is not an act of dispossession

(1903) 3 Ind Cas 393 (393) (Cal), Sonatan Shehh v Chaku Shehh (Where the plaintiff allows defendant the user of his land on payment of rent and defendant afterwards denies the plaintiff's title and pays rent to the superior landlord, these facts do not amount to dispossession but adverse possession)

(1886) 1886 All W N 277 (277), Abdulla v Hargu Lall (B trying to build a wall on A's land and prevented by order of Magistrate from doing so-No dispossession of 1 from date of order)

(1570) 18 Buth W R 64 (65, 66), Nund Kishore Singh v Hures Pershad

tenure claimed. This view seems questionable as there is no physical dispossession in such a case)

(1920) A I R 1920 Cal 757 (758) 60 Ind Cas 386, Mahara, Bahadur Singh v. Pulm Mal

(1901) 7 Oudh Cas 259 (263), Basaran Singh v Navab Badshah Bahu Begain (Decree of the Settlement Court giving the mortgagees propractary porsession of the property is a dispose-sion of the mortgagors)

(1906) 9 Oudb Cas 293 (295), Raja Mumtaz Als Ehan & Sai ju Singh (Assertion of under-proprietary title by the ten int does not amount to dispossession) (1915) A I R 1915 Cal 727 (728) 26 Ind Cas 368, Azuat Ullah v Sadat Ullah.

(Where the proprietor was presented from collecting the rent from his tenants, it was held that the case was one of dispossession) (1935) 163 Ind Cas 897 (903) 62 Cal L Jone 177 (188) 63 Cal 300.

Surendra Lumar Roy v. Ahmed Nauab

(1917) A I R 1917 Pat 528 (529) 39 Ind Cas 777 2 Pat L Jour 259, Baker Hussam A Ranget Koer (If a person is completely ousted from his right to catch fish in water on his own land by a definite act of aggression by another parts, such act amounts to a disposession)

8 (1917) A I R 1917 P C 18 (22) 44 Cal 858 44 Ind App 104 40 1nd Cas 337 (PC)

^{9 (1895)} Gt LJ Ch 416 (418) 1 Ch 641 12 R 310 72 LT 670

^{10 (1880) 28} W R (Eng) 452 (454) 49 L J Ex 220 5 Fx D 246.

Where there has been, in fact, a cessation of possession, the question of intention is immaterial, but in determining whether there has been discontinuance of possession, intention cannot altogether be left out of account.¹⁰³

Another person must follow into possession:

Where A is said to dispossess B, it clearly involves the idea that B's possession has terminated by the tortious act of A and that A has entered into possession by driving out B. It has been held that it is necessary even in constitute a discontinuance of possession that the termination of one man's possession must be followed by the actual possession of anmher. An A mere ceasing by the person in possession to occupy in enjoy the property is not a discontinuance within the meaning of the Article. Nor would a resistance offered by one of several persons in possession to another of such persons in

10a (1925) A I R 1925 Cal 981 (934): 85 Ind Cas 594, Abhoysankar v. Satyendra Prasanna Bose.

10b (1910) 8 Ind Cas 639 (612). 85 Bom 79, Vasudeo τ Ehnath. (B obtaining decree for possession against A but failing to execute it within the period of limitation—This does not amount to discontinuance of possession by B.)

(1913) 19 Ind Cas 3 (3) (Mad), Thangaswami Thetan v. Rajaram Nadu. (Where the owner learnes the hand in the possession of strangers for over 20 years and hree away cultivating other lands, it constitutes abandon-

ment.) (1881) 1881 Pun Re No 41, Lutf Ali v. Khushwakt Rai

(1897) 1 Cal W N 277 (278), Sonnur Ala Hararika v. J. Huttman.

(1914) A I R 1914 Upp Bur 44 (45) . 27 Ind Cas 981, Nga Po v. Nga So Pe

(1923) A I R 1923 Cal 1 (6) 50 Cal 49 74 Ind Cas 630, Charu Chandra Pramanck v. Nahush Chandra Kundoo.

(1925) A I R 1925 Mad 834 (835): 87 Ind Cas 886, Gounda Ramanuja v. Mohomed Escof

(1910) ATR 1919 Mad 8 (10): 49 Ind Cas 89, Euppusicanty v. Kusala Ramiahi.
 (1921) ATR 1921 Pat 36 (36): 57 Ind Cas 717: 5 Pat L Jour 593, Madan Mohan Singh v. Braj Bihari Lal.

1929) A I R 1929 Pat 117 (120): 8 Pat 549 · 115 Ind Cas 699, Bageswari Charan Snoh v. Jagarnath Kuari.

(1930) A I R 1930 Lah 303 (303) : 120 Ind Cas 792, Mangal Singh v. Ali Sher. 11. (1917) A I R 1917 F C 18 (21, 22) - 41 Cal 855 - 44 Ind App 104 - 40 Ind Cas 837 (F C), Basant Kumar v. Scoretary of State.

(1934) A I R 1934 Bom 207 (209): 58 Bom 397 & 406: 149 Ind Cas 882 &

885 [F B], Krishnaji v. Madhusa, (A I B 1921 Pat 26, Followed)
1919) A I R 1919 Mad 8 (10) + 49 Ind Cas 89, Kuppursumy, Kusala Ramich,
(1873) 20 Sath W R 183 [184], Pudar Bundos Mahantee v. Mohesh Chunder
Sen. (Recept of rent is good vidence of possession but it does not
necessarily follow that a party in possession has been disturbed because
he cambot prove that he has collected rent of a particular protono-

the property]
(1928) 107 km3 Cas 779 (780) (Lah), Nur Khan v. Fakir Abdullah. (Where a person is shown to have been in possession of land for a number of vars, the mere fact that the land was not cultivated during certain harrests does not make him out of possession during that period is

(1919) A I R 1919 Cal 694 (695) 44 Ind Cas 297, Bengal Coal Co. Ltd. v.

(1909) (1884)

his attempt to get separate possession of his share amount to a Arts, 142 & 144 dispossession of the latter. 11a In McDonnell v. McKinty, 12 which was also a case under Section 3. Chapter 27, 3 & 4 Will, IV. Blackburne, C. J., observed:

"The word 'discontinuance', I understand to mean an abandonment of possession by one person followed by the actual possession of another. This, I think, most be its meaning; for, if no one succeed to the possession vacated or abandoned, there would be no one in whose favour or for whose protection the Act would operate. To constitute discontinuance there must be both dereliction by the person who has the right and actual possession to be protected. . . . In confirmation of these remarks, I may here refer to all the authorities which have been cited. and which prove, if proof was required, that actual possession is the object of the Statute and that to apply its provisions to any

other case would be to violate its plain meaning and policy." Possession of new-comer must be adverse to the former possessor:

This element is also necessary to order to constitute a disposses. sion or a discontinuance of possession 13 For, if the possession of the new-comer were not adverse to the former possessor, it would be consistent with the right of the former possessor and would therefore furnish no cause of action to him in respect of which time can run against him. Thus, when any person, whether a father or a stranger,

- (1930) A I R 1930 Lah 303 (303) . 120 Ind Cas 792, Mangal Singh v. Als Sher (Vaste land—Possession is presumed to be with owner, and mere fact that owner has allowed by land to remain waste does not amount to discontinuance of possession)
- (1923) A I R 1923 Rang 138 (139) 79 Ind Cas 817, Mauno Pen v. Mauno Po Mauna (Omission to enlivate the land does not amount to abandonment)
- (1921) A I R 1921 Bom 368 (369) · 45 Bom 1020 62 Ind Cas 101, Su amirao Shriniyas v Bhimabai Padappa.
- (1929) A I R 1929 Pat 685 (694) . 9 Pat 447 . 122 Ind Cas 801, Gops Ram v. Jagarnath Singh (In the case of mineral rights non-user is not an abandonment of possession on the part of the owner)
 - (See (1930) A I R 1930 Lah 633 (634) 121 Ind Cas 733, Sadda Smoh 1. Lehna Singh
 - (1939) A I R 1939 Nag 7 (9), Meherban Lalls Pingara v. Yusufhhan Kallu Pustara (It imports abandonment)
 - (1938) A I R 1938 Sind 198 (201) 178 Ind Cas 690, Arab Jhanglu v. Panjalshah Yakubalishah (It must be in the nature of an abandonment)
 - (1929) A I R 1929 Oudh 402 (405) 119 Ind Cas 866, Mubinulnuser v.
- (1900) 2 Bom L R 620 (621], Bals Kheirs v Dubanu Bahan]
- 11a.(1929) A I R 1929 Cal 297 (297] . 56 Cal 914 119 Ind Cas 289, Gaya Prasad v Bakyamanı Dası. 12. (1847) 10 Ir L R 514. (Cited in A I R 1934 Born 207 (209))
- 13. See cases cited in Foot-Note 6 ante
 - (1893) 1893 Pun Re No 101, Sundar v. Mt Rohonsu (The terms 'dispossession' or 'discontinuance of possession' will not apply to the case of a permissive occupation by another or an occupation which recognises the proprieture right of another 1

enters upon the estate of an infant and continues in possession, the Court will consider such person entering only as guardian to the infant and his possession would be deemed to have begun as that of bailiff or agent of the minor and to have continued as such, until after the minor had arrived at the age of majority he did something to convert it into a wrongful possession on bis own account. There is no disnossion or discontinuance of possession in such a case.¹⁴

- 40. Defendant must be in possession at the date of the cuit.—The suit contemplated by Articles 142 and 144 being one for possession, i. e., for the dispossession of the defendant from the property of which possession is claimed, it is clear that, at the date of the suit the defendant must be in possession, A mortgaged property to B with possession and thereafter died. C, one of A's heirs, received the proprietary allowance from the mortgagee exclusively for several years. It was held that this would not constitute adverse possession of the mortgaged property inasmuch as, until redemption, the possession was with the mortgage and none of A's heirs was entitled to the mossession must bedemption.
- 11. "Possession," what is.—A possession in fact must be distinguished from a possession in law. A possession may exist in fact but not in hw. Thus, the possession by a servant of his master's property is for some purposes not recognised as such by law, but is merely regarded as a detention or custody rather than possession. Again, a possession may exist in law but not in fact. Thus, the owner of a diluvated land would in law be deemed to be in possession of the land notwithstanding that, actually, he could not have been in possession of it. Similarly, the owner of a land, who has parted with the surface rights therein, is deemed to be in possession of the subsol, though as a matter of fact he is not in actual possession of it. The possession thus attributed to him by law is known as

14. (1910) 8 Ind Cas 699 (642) . 12 Bom L R 956 (968, 969) : 85 Bom 79, Vasudes v. Eluath.

Note 10

1. See Note 3 2 (1928) A I R 1928 Oudh 155 (198) : 108 Ind Cas 817, Abdul Halim Khan v.

Saadat Ali Khan (1926] A I R 1926 Cal 1166 (1168) • 97 Ind Cas 1003, Birendra Nath Ray v. Satis Chandra Jourdar.

3. (1980) 3 All 24 (35) (F B), Umr-un-nissa v. Muhammad Yar Khan.

Note 11

1. Salmond's Jurisprudence, 8th Edition, p 291.

Sec (1861) 30 L J C P 253 (256, 257): 10 O B (N S) 227: 7 Jur (N S) 948: 128 R 881, Whate v. Bauley (A servant, balliff or any person occupying land in a merely munisterial character does not acquire possession (in a legal sense))

2 (1931) A I R 1931 P O 162 (164): 192 Ind Cas 610 58 Ind App 228: 59 Cal 60 (P C), Bhupendra Narayan v. Rajesuar Prosad.

(1926) A I R 1926 Pat 130 (135): 5 Pat 80. 91 Ind Cas 169, Midnapore Zamindari Co. v. Ram Kanai.

(1921) A I R 1921 Pat 234 (236) . 57 Ind Cas 744 : 5 Pat L Jour 632, Gaga-dhar Prasad v. Dulhin Gulab Koer. (Submerged land)

constructive possession. Such constructive possession is really nothing Arts, 142 & 144. more than the right to take physical possession, and does not depend upon #ser.3

A possession in fact may be either in respect of a corporcal property, or in respect of an incorporeal right such as a right to an office, a dignity, or a monoroly. But in either case two elements must exist in order to constitute a possession in fact-the animus possidends and the corpus possessionis. The former is the mental element and consists in the intent to possess. The latter is the physical element and consists in the concrete realisation of the intent by actual user of the thing sought to be possessed,4

What constitutes corpus possessionis in the case of corporeal property differs, however, to some extent from what may be necessary to constitute corpus possessionis in the case of incorporcal property. In the case of corporeal property it consists, according to Sir John Salmond, in the continuing exclusion of alien interference coupled with the ability to use the thing oneself at will. Actual use of it is not essential. In the case of incorporcal property it consists in actual continuous use and emoyment, that being the only possible mode of exercise in such cases

It follows from the above discussion that acts of user without the animus possidends or the intent to possess do not constitute possession at all and therefore do not constitute adverse possession. 68

8 Salmond's Jurisprudence, 8th Edition, p 294

(1931) A I R 1931 P C 162 (164) 132 Ind Cas 610 58 Ind App 228 59 Cal 80 (P C), Bhunendra Narayan v Raseswar Prosad. 4. Salmond's Jurisprudence, 8th Edition, pp. 294 to 391

(1902) 27 Bom 43 (51) 4 Bom L R 721, Taruba: v Fenkat Rao. (Possession of a right consists in the exercise of the right)

5. Balmond's Jurisprudence, 8th Edition, pp. 319, 320,

(1914) A I R 1914 All 257 (297) 26 Ind Cas 86, Inquat Hussam v Secretarn of State

5a (1915) A I R 1915 Mad 720 (721) 24 Ind Cas 735, Boyanna v Asethu (Occupation for storing hay for 36 years does not by itself create title by adverse possession—But if there be animus possidends manifested by transfers, presumption of title arises)

(1924) A I R 1924 Mad 197 (198, 199) 46 Mad 866 75 Ind Cas 39, Taluk Board, Duidigul v Venkatarama Ayyar (Gramanatham in Madras villages—Indiscriminate miscellaneous use by villagers does not amount to adverse possession)

(1873) 20 Suth W R 285 (285), Ooma Churn Chowdhry v Umbica Churn Dey (Land used by neighbouring villages as a grazing common)

(1914) A 1 R 1914 Sind 119 (120) 8 Sind L R 331 29 1ud Cas 51, Sultan Mahomed v Secretary of State.

(1925) A I R 1925 Pat 210 (216) 3 Pat 915, 80 Ind Cas 544, Narayan Singh v. Dildar Als Khan

(1934) A 1 R 1934 All 888 (883) 153 Ind Cas 672, Mahabir Singh v Sheo Shankar Singh (A miscellaneous user such as making only a temporary use of the land for occasional necessities of a householder cannot create any title by adverse possession , a miscellaneous user of this sort is not possession at all)

(1922) A I R 1922 Lah 59 (59) 74 Ind Cas 282, Bhuru v Datu Ram (Uest of an intermittent nature accompanied by no assertion of right is a very common phenomenon in this country and arouses no opposition -Such user does not amount to adverse possession)

Thus, mee acts of trespass without any intent to possess do not constitute adverse possession. The tying and grazing of cattle by a person without title on vacant or waste land, do not, in this country, excite any particular attention and are neither meant to denote nor understood as denoting an intent to possess, and consequently do not constitute possession. In the case of uncultivated and jungle land

- (1900) 1 Ch 19(23): 81 L T 564: 48 W R (Eng.) 177: 16 T L R 44, Littledale v. Literiool College.
- (1905) 8 Oudh Cas 177 (180, 181), Shee Naram Singh v. Bodal Singh.
- 6. (1893) 7 Pom 323 (327) : 7 Ind Jur 613, Anandrav v. Shankar.
 - (1925) A I R 1925 Pat 568 (509): 88 Ind Cas 676, Kedar Nath v. Amrita Mandal.
 - (1935) A I R 1935 Cal 760 (761): 150 Ind Cas 752, Bhabani Prosanna v. Mannadra Chandra. (Adverse possession must be continuous. A series of isolated acts of trespass fall short of the requisite.)
 - of isolated acts of tresposs fall short of the requisite.)
 (1923) A I R 1923 All 399 (490) 71 Ind Cas 265, Lakhu v. Laisingh. (Temporary user which would be unnoticed or permissible would not
- amount to adverse possession.)
 7, (1934) A IR 1931 Lab 1900 (1951): 153 Ind Cas 964, Labha Singh v. Municipal Commissioner, Americar. (Non-payment of rent makes no difference)
 - (1900) 4 Ind Cas 314 (316) (F B) (Lah), Bawa Naraingir v. Meran Bakhsh.
 - (1916) A I R 1916 Lah 294 (294): 86 Ind Cas 207, Lachman Das v. Narasingh Das
 - (1917) A I R 1917 Lah 394 (394): 42 Ind Cas 412, Faitch Khan v. Bisakhi Ram (Storing dung cakes and trying sheep on site is not sufficient to give a title by adverse possession.)
 - gue a title by adverse possession.)

 (1923) A I R 1923 Lah 25 (26) . 69 Ind Cas 4, Mansa v. Khushali Bam.

 Acts of user over waste land such as tethering of cattle and storing fodder and graing of cattle, are insufficient to establish adverse
 - possession)
 (1918) A I R 1018 Cal 844 (846) : 27 Ind Cas 640, Mahabir Misser v. Nanda
 Eshore Muser.
 - (1910) A I R 1916 Nag 90 (91): 13 Nag L R 25: 39 Ind Cas 54, Radhikadas v. Harmohanlat (Occasional tethering of cattle and stacking grass on vacant site is not dispossession of owner.)
 - (1926) 98 Ind Cas 880 (880) (Lah), Nudar v. Shib Ram. (User of a vacant site in a village abadi by tying up of cattle and keeping of heaps of dung is wholly insufficient to create an adverse title or to establish acts of ownership)
 - (1924) A I R 1924 Lab 370 (372): 69 Ind Cas 573, Wastr. Mat v. Ganga Ram. (Tying esttle and storing cowdung cakes on a vacant site.)
 - (1929) A I R 1929 Lah 432 (432): 115 Ind Case 71. La pat Rai v. Sohna. (Tethering of cattle on a vacant site, keeping dung cakes and building a khut)
 - (1934) A I R 1934 Lab 634 (685): 151 Ind Cas 919, 2tt Atika Bibea v. Alloha-Bakhhi. (Where the defendant in proof of his place of adverse possession over a certain land relies on various acts of enjoyment such as domping of rubbash, tethering of cattle, enclosing land with walk tet, such acts if they stood by themselves would not be sufficient to prove adverse possession on the part of the defendant, but they taken in conjunction with the fact that the defendant and enclosed the land in dispute which had been in existence for a period much longer than twelve years would be sufficient proof of adverse possession.)
 - (1912) 13 Ind Cas 467 (467) (Mad), Veeranna v. Ghelammayya.
 - (1937) A I R 1937 Lah 492 (493): 178 Ind Cas 971, Dwarka Das v. Municipal Committee America.
 - (1909) 4 Ind Cas S14 (315) (Lah), Bawa Naraingir v. Mira Bakhsh.

which produces nothing but self-sown trees and a seasonal crop of Arts. 142 & 144 wild grass, it has been held by their Lordships of the Privy Council that sporadic invasions by the person without title and the grazing and carrying away of grass and the cutting of firewood do not amount to such possession as will enable him to prescribe for a good title.8 For other instances, see the undermentioned cases.9

(But see (1934) A I R 1931 Mad 274 (274) 148 Ind Cas 681, Ramalinga Pandaram v. Anthonimuthu Vathiar, (Mere storing manure and having cattle upon the land are not sufficient to establish adverse possessiou But erection of a fence and enjoy. ment of fruit are clear acts of adverse possession)]

8, (1930) A I R 1930 P O 291 (282) , 11 Lah 638 : 57 Ind App 273 : 127 Ind Cas 531 (PC), Jahandad Khan v. Abdul Ghafur.

9. (1917) A I R 1917 All 415 (416): 42 Ind Cas 896, Gajadhar v Bhiman. Occupation of Bangar land by a tenant, in the shape of stacking cowdung, erecting a kacha hat and the like, does not amount to adverse possession against the landlord.) (1923) A I R 1923 All 557 (557, 559): 74 Ind Cas 251, Magbal Hussain v.

Ahmad Husam, (Vacant land was being used by the Municipality for the deposit of refuse.—Such user will not amount to adverse posses-

sion against the owner or dispossession of the owner.)

(1937) A I R 1937 All 233 (240) 169 Ind Cts 151, Daya Shankar v Deb-Dim (Isolited plot of plantiff antindar occupsed in tenant of another annindar—Attention of plantiff und directed to question of whether it was in his mahal or in that of other zamindar-Plaintiff is deemed to be in constructive possession and there is no dispossession of the plaintiff.)

(1892) 16 Bom 338 (311), Framji Cursetji v Goluldas Madhowji (Vacant site - Temporary acts of user without any claim of ownership being

thereby intended is not adverse possession)

(1924) A I R 1924 Lah 492 (492) 78 Ind Cas 152, Mangat Ram v. Strayul-Hasan (Merely burying dead bodies in waste land does not amount to dispossession so as to be adverse to the real owner l

(1938) A I R 1938 Lah 324 (324) 176 Ind Cas 930, Shah Ninaz v Ghulam Shah (Waste land—Budding of temporary chhappar, surrounded by ordinary enclosure of bushes, is not sufficient to constitute adverse possession l

(1917) A I R 1917 Oudh 20 (23) 41 Ind Cas 80, Bats Pal v Binn Chandra Chatter see, (Mere casual sets of cutting wood in a large tract of jungle or occasional acts of cultivation need not be treated as an ouster of the Owner's possession)

(1929) A I R 1929 All 428 (129) 116 Ind Cas 816, Cherr v Pamseuak (Planting by residents in the abadi of trees on vacant land near their

houses cannot by itself be any evidence of the establishment of exclu-SIYO POSSESSION (1927) A I R 1927 Cal 49 (50) 93 Ind Cas 849, Nanda Kumar v Emdad Ali (In the case of waste land the enting of hogla which is a wild

grass where it is not supposed to be the exclusive property of any one, is not an act of possession by any party) (1926) A I R 1926 Lah 615 (616) 97 Ind Cas 705, Rulia v. Nur Moham-mad (Erection and user of a cattle shed on a vacant site)

(1933) A I R 1933 Born 314 (917) 145 Ind Cas 408, Secretary of State v. Jaterchand Panaji (The physical facts proved coupled with the evidence in the case proved sidvesse possession.)

(1920) A I R 1920 Cal 757 (758) 60 Ind Cas 386, Mohara; Bahadur Sinah v. Pulm Mal (Where with the intention of taking possession of a

Again, the mere existence of the animus possidendi will not be

- strip of waste land belonging to the plaintiff, defendant deposits earth excavated from a tank and cuts the trees thereon and plaintiff sued more than 12 years afterwards to recover possession. Held, that the acts of defendant amounted to ouster of plaintiff.)
- (1929) A I R 1929 Lab 526 (527): 117 Ind Cas S1, Det. Ditta Ram v. Waryam (Dumping of rubbish, tethering of cattle, etc., if they had stood by themselves, would not have been sufficient to prove adverse possession on the part of the defendant, but in conjunction with the tet that the defendant had enclosed the land in dispute with a wall which had been in existence for a period much longer than 12 years, were sufficient proof of his adverse possession.
- (1926) A I R 1926 Lah 565 (566) . 96 Ind Cas 328, Malhan v. Harnon Singh (Depositing manue on a vacant site in an abadi without the actual possession of the site, does not amount to adverse possession.)
- (1923) A I R 1923 Lah 35 (35) 69 Ind Cas 363, Ram Das v. Chandi.
- (1922) A I R 1922 Lah 825 (327) 64 Ind Cas 876, Birjoo v Bhikhu. (Where one of co-sharers sold a definite portion of the unpartitioned shamilat, which did not belong to him exclusively, and after the sale theatmapp vendees occupied the land and enjoyed it precisely in the same way as
 - not having been shown that it was impossible in the nature of things for the strangers to occupy the land by corporal contact, the element of continuity and the necessary adversity have not been established.)
- (1928) A.J. R. 1928 Mad 1176 (1180) 52 Mad 25 115 Ind Clas 49, Secretary of State v. Ruthalanathususani Temple (Fugitive and intermittent acts of ownership would not establish any effective possession).
- (1926) A I R 1926 Mad 235 (236) 92 Ind cas 18, Municipal Council, Cochin v. Bavu Depuiss, (The act of sweeping the land occasionally by the municipality cannot be said to be adverse possession as against the real owner.)
- (1915) A I R 1915 Wad 720 (720): 24 Ind Cas 735, Putloor Boyanna v. Golusu Asethu.
- (1900) 1900 Pun L R p. 142 (143), Det. Ditto v. Ida. (The more fact of certain
- (1879) 3 Bom 452 (581), Bhasharappa v Collector of North Kanara. (Carrying on cultivations in different parts of a forest does not itself make one an owner of the forest.
 - (1924) A I R 1924 Lab 492 (492) 78 Ind Cas 152, Mangat Ram v Straj-ul-Hasan. (Using land for burial purposes for more than twelve years does not constitute adverse possession.)
- (1928) A I R 1928 Lah 112 (112) · 106 Ind Cas 615, Muhh Ram v. Harhesh. (1926) 96 Ind Cas 452 (453) (Pat), Hemat v. Karu Sahu. (Mere throwing of
- rubbish and house sweepings on the land in dispute.)

 (1931) A I R 1931 Lah 489 (49), 134 Ind Cas 291, Nawah Khan v. Abdulla
 Khan (Erection of Khurli or mud trough and other such temporary
 and fitmsy crections do not give rise to adverse possession.)
- (1927) A I R 1927 Lah 416 (417): 102 Ind Cas 9, Kunj Lat v. Ramji Lat. (Planting of trees on common land is not adverse possession.)
- (1927) A I R 1927 Cal 97 (98) 94 Ind Cas 5, Mohendra Nath v. Nabadwap Chandra. (Occasional user of land for the purpose of exercising a

sufficient without actual user. " Thus, the more entry of a piece of Arts, 142 & 144 land in the Revenue Records as Government waste does not transfer possession to Government. 5h

Note 11

As regards the corpus possessionis, the nature of the requisite possession must vary with the nature of the subject possessed. The possession must be a kind of possession of which the particular subject is susceptible 10 A forest land on bills, very little of it being capable of cultivation, "is far removed as a subject of definite possession from lands under continuous and permanent cultivation.

> (See also (1922) A I R 1922 All 50 (51) 70 Ind Cas 483, Md Shaft v. Bindeshari Singh (Planting of trees on another person's Land is active trespass)

(1929) A I R 1929 Oudh 328 (330) : 114 Ind Cas 815, Jagatat Singh . Muhammad Asghar Ali (Every owner must be presumed to know the boundary of his own land and if he allows another person to cross that boundary and occupy an area of at least 25 acres, possibly more, and plant thereon a number of trees and forbid the owner's men to enter the land, and this possession extends for a period of over 12 years, it must be held that a

title has been obtained by adverse possession)) 2a (1934) 67 Mad L Jour 43 (N R C) (Where the land is a waste land, mere assertion of hostile title by another and a sale of the land by him to a third party is not anflicient to disturb the true owner)

(1929) A I R 1929 Pat 645 (693) 9 Pat 447 122 Ind Cas 801, Gentram v Jagarnath Singh (Defendant not owner of sub-soil granting lease to X, in 1887-Lessee working mines only in 1913-X cannot be said to be in possession from 1887.)

(1927) A I R 1927 Cal 117 (121); 101 Ind Cas 62, Pannalal Ghose v. Adjas Coal Co., Ltd. (Asserting possession in a written statement is not sufficient to show possession)

(1933) A I R 1933 Nag 202 (203, 204) 142 Ind Cas 493 · 29 Nag L R 187, Mt Manju v. Gulab Rao (Mere continuation of name in the mutation register does not amount to adverse possession)

9b (1914) 24 Ind Cas 813 (818) 7 Smd L R 169, Secretary of State v, Mushtak Singh

(1911) 10 Ind Cas 363 (365) (Cal), Jon Kali Ron Choudhury v. Hemangini Debi

(1913) 18 Ind Cas 811 (813) (All), Ganga Sahai v Kanhaiya Lal.

[See also (1919) A I R 1919 Ondh 80 (82) 22 Oudh Cas 369 54 Ind Cas 317, Bhaguan Baksh Singh v Sant Prasad, (Where there was no invasion of plaintiff's rights beyond certain entries in the settlement knewat no question of adverse possession arises,) (1907) 6 Cal L Jone 472 (486), Mrs Warnuddin v. Lala Deoks Nandan 1

10 (1934) A I R 1934 P G 23 (25) 147 Ind Cas 545 GI Ind App 78 . GI Cal 262 (P C), Secretary of State . Debendra Lat Khan

(1922) A I R 1922 P C 181 (181, 182) 66 Ind Cas 151 48 Ind App 395 44 Mad 883 (P C) Kuthali Mootharar v Kunharan Kutty

(1914) A I R 1914 Cal 762 (763) 23 Ind Cas 136, Hemchandra v Secretary of State (It is as unnecessary as it would be impossible for the grantee of a fishery to exercise his rights over every part of the fishery in order to avoid losing them by lapse of time)

(1903) 31 Cal 397 (405), Wals Ahmed Choudhry v Tota Meah Choudhry (Acts indicative of possession must vary according to the nature of the property over which possession is exercised and in the case of waste linds, the cutting of grass and grazing of cattle would to the ordinary acts by which possession would be asserted. But where the acts are being done by persons on the waste lands of their landlords, the principle can only apply, if the acts done were such as to amount to an assertion of possession adverse to the landlords, and were not acts which were done with their permission)

Arts. 142 & 144 Notes 11-12

compactly situated and capable of being remembered with identification as the lands held and occupied in articulate plots or under leases." The Crown, in the case of a fishery helonging to it, exercises its rights by granting leases or licences to fish; it does not itself fish. Consequently the granting, by a person other than the Crown, of leases or licences to fish in the case of a fishery which prima facie belongs to the Crown is evidence of usurpation by that person of the distinctive rights of the Crown and is thus most significant evidence of adverse possession.

Where a person entitled to possession enters in the assertion of that possession, the law vests the actual possession in him. If there are two persons in a field each asserting that the land is his, and each doing some act in the assertion of the right of possession and if the question is which of these two is in actual possession, it must be held that the person who has the title is in actual possession and the other person is a trespassor.¹³

12. Possession of part, if possession of whole, — It is a well settled proposition of law that in the case of a rightful owner of property, proof of actual possession of a part of the property will he sufficient to prove his possession of the whole, except such portions of it as may be in the actual possession of another. But, in the case of a trespasser, claiming to be in adverse possession against the true owner, the trespasser will not be deemed

```
(1935) 103 Ind Cas 697 (902) · 63 Cal 800, Surendra Kumar Roy Chowdhury
v Ahmed Nawab Choudhury.
```

⁽¹⁹³⁸⁾ A I R 1938 Mad 454 (455) : 178 Ind Cas 801, Atchayya Patrudu v. Jalaluddin Sahib

⁽¹⁹¹⁷⁾ A I R 1917 P C 18 (22): 44 Ind App 104 44 Cal 858: 40 Ind Cas 837, Basant Kumar Roy v. Secretary of State.

^{(1910) 7} Ind Cas 700 (701) (Cal), Raj Krishna v. Muktaram Das.

⁽¹⁹²⁸⁾ A I R 1928 Oudh 470 (471): 110 Ind Cas 569, Md. Hasan Alev. Har Nath Kuer.

⁽¹⁹²⁶⁾ A I R 1926 Pat 130 (135) · 5 Pat 80 · 91 Ind Cas 169, Midnapur Zamindary Co. v. Ram Kanas Singh Dec.

[.] Young. : 105 L T 587: 55 S J 686: 27

^{(1908) 7} Cal L Jour 414 (421) . 12 Cal W N 273 : 3 Mad L Tim 212, Mirza

Shamsher Bahadur v. Kunj Behari Lall. (1931) A I R 1934 Cat 294 (295): 149 Ind Cas 1109, Nalahi v. Abhoya Chandra Sil.

⁽¹⁹⁹⁸⁾ A I R 1998 Sidd 192 (141): 176 Iud Cas 549, Tahilram Tachchand v. Mt. Miral

 ⁽¹⁹²²⁾ A I R 1922 P C 181 (181, 182) 66 Ind Cas 451 : 48 Ind App 395 :
 41 Mad 683 (P C], Kuthati Moothatar v. Kunharan Kutty.

^{12. (1934)} A I R 1934 P C 23 (25) 147 Ind Cas 545 . 61 Ind App 78 : 61 Cal 262 (P C), Secretary of State v. Debendralal Khan.

 ^{(1909) 4} Ind Cas 442 (447) (Cal), Budhumukhi Dass v. Jetendra Nath Roy.
 Note 12

 ^{(1001) 26} Bom 410 (416]: 4 Bom L R 28, Vithaldas v. Secretary of State.
 (1936] 164 Ind Cas 452 (454, 455) (Cal), Durgaram Chaudhury v. Amrila Chandra.

- o be in possession of the whole of a property merely because he Arts. 142 & 144s in possession of a part of it.3 The reason is that, as will be seen in Note 53 infra, in order to constitute adverso possession, the
 - (1908) 3 Mad L Tim 212 (220) : 12 Cal W N 273 7 Cal L Jour 414, Marga Shamsher Bahadur v. Munshs Kung Behars Lal.
 - (1921) A I R 1921 Pat 379 (389) 57 Ind Cas 786 5 Pat L Jour 563, Ramlal v Satya Niranjan Chakratarti.
 - (1938) A 1 R 1938 Pat 222 (223), 17 Pat 210, 175 Ind Cas 165, Chandra Mohan Singh v Rutu Mian (Large area of waste land settled with tenant-Cultivation of bulk of demised hand amounts to enjoyment of possession for purposes of Article 142 in absence of specific acts of adverse possession)
- 2. (1896) 24 Cal 256 (259); 1 Cal W N 304, Mohins Mohan Roy v. Promoda
 - Nath Roy. (1903) 31 Cal 397 (404), Wals Ahmed v. Tota Meah.
 - (1907) 34 Cal 753 (774) 5 Cal L Jour 583 : 12 Cal W N 193, Brozo Nath Bose v Durga Pershad Singh.
 - (1935) 163 Ind Cas 897 (902) · 63 Cal 300, Surendra Kumar Roy v. Ahmed Nawab.
 - (1935) 164 I C 452 (454) (Cal), Burgaram Choudhury v. Amrsta Chandra.
 - (1904) 9 Cal W N 202 (300), Bagdu Maghi v. Burga Prasad Singha, (1915) A I R 1915 Cal 464 (473) . 29 Ind Cas 156. Amrita Sundars v. Shee-
 - rasuddin Ahamed. (1919) A I R 1919 Cal 782 (795) . 47 Ind Cas 315 (S B), Shib Chandra Roy v.
 - Harendra Lal Ras (1921) A I R 1921 Cal 277 (282) 66 Ind Cas 923, Maharaja of Cooch-Behar
 - v Mahendra Ranjan Ras Chaudhurs. (1925) A I R 1925 Cal 981 (983) 85 Ind Cas 591, Abhoy Sankar v. Satyondra
 - Prasanna. (1927) A I R 1927 Cal 117 (121) : 101 Ind Cas 62, Panna Lal Ghose v. Adjas
 - Coal Co. Ltd.
 - (1995) A I R 1935 Cal 760 (762) 159 Ind Cas 752, Bhabani Prosanna Lahiri v Manindra Chandra Roy. (1980) A I R 1930 Lah 76 (77) 120 Ind Cas 531, Mohammad Sadiq v Allah
 - Baksh (1930) A I R 1930 Lah 803 (301) 120 Ind Cas 792, Mangal Singh v. Ali
 - (1914) A I R 1914 Mad 380 (390) 23 Ind Cas 520, Karsa Kownden v. Raghar a Reddi
 - (1908) 3 Mad L Tim 212 (220) 12 Cal W N 273 7 Cal L Jour 114, Mirea Shamsher Bahadur v. Munshi Kunj Behari Lal
 - (1928) A I R 1928 Oudh 470 (471) . 110 Ind Cas 569, Mahomed Hasan Als v. Harnath Koer
 - (1932) A I R 1932 Oudh 135 (187) 135 Ind Cas 689, Indar Gir v. Special Manager, Court of Wards, Balrampur Estate.
 - (1936) A I R 1936 Oudh 207 (208, 209) 165 Ind Cas 101, Ramzan v. Md. Ahmed Khan
 - (1936) A I R 1936 Oudh 387 (396) 161 Ind Cas 118, Partap Bahadur Singh v Jagatyst Singh
 - (1920) A I R 1920 Pat 383 (394) 55 Ind Cas 113, Lodna Colliery Co., Ltd. · Bipin Behavi Bose
 - (1920) A I R 1920 Pat 542 (546) 56 Ind Cas 184 . 5 Pat L Jour 273. Pramatha Nath v A J. Mesk.
 - (1921) A I R 1921 Pat 879 (389, 390) . 57 Ind Cas 786, Ram Lul Eaus Raf v. Satya Xıranjan
 - (1921) A I R 1921 Pat 402 (416) 83 Ind Ca. 205 3 Pat 85, Sasha Bhusan v. Ram ias Agarualla.
 - (1927) A I R 1927 Oudh 209 (209) . 101 Ind Cas 714, Saist Husson v. Etwad Hussain
 - (1929) A I R 1929 Pat 685 (693) 9 Pat 447 : 122 Ind Cas 801, Gopt Ram v. Jagarnath.

Note 12

Arts. 142 & 144 possession must be actual. In other words, the trespasser's adverse possession must be confined to the area actually occupied by him,2 and mere constructive possession on the part of a person will not enable him to prescribe for a title by adverse possession. But, what constitutes actual possession of the whole of a property by a trespasser depends on the circumstances of each case.

Illustrations

1. Possession of a part by a trespasser will be evidence of possession of any other part also, where the two parts are so closely

(1931) A I R 1931 Pat 436 (439) 133 Ind Cas 453, Barjnath Jugal Kishore y Manmara Chandra Nandi.

(1909) 2 Ind Cas 63 (65) 12 Oudh Cas 58, Makeswar Baksh Singh v. Pratap Bahadar Singh

(1910) 6 Ind Cas 359 (360) (Cal), Baroda Prasad v. Annoda Mohan.

(1910) 6 Ind Cas 392 (397) (Cal), Nauab Bahadur of Murshidabad v. Gopinath Mandal.

(1911) 10 Ipd Cas 742 (744) (All), Zahuram v Rahim.

(1922) 65 Ind Cas 749 (752) (Oudh), Durga v. Ram Padarath,

(1935) A I R 1935 Pat 33 (36) 13 Pat 517 . 156 Ind Cas 136, Multakeshi Patrans v. Madnapur Zemindary Co Ltd (Removal of comparatively small quantity of minerals is not sufficient to constitute adverse possession. There must be complete exclusion of the true owner. Adverse possession affects only minerals for which possession has been proved)

 (1936) 163 Ind Cas 897 (902) 63 Cal 300 (312), Surendra Kumar Roy v. Ahmed Nauab Chowdhury.

(1930) A J R 1930 Lah 303 (301) 120 Ind Cas 792, Mangal Singh v Ali

(1930) A I R 1930 Oudh 374 (376) . 126 Ind Cas 675, Sohan Lal v. Saikh Mohammad Hussain.

(1926) A I R 1926 Pat 365 (391) : 96 Ind Cas 1027, Reshabje Pitambar V. Shasha Bhusan.

(1927) A I R 1927 Oudh 209 (209) : 101 Ind Cas 714, Sadik Husam V. Etizad Husain.

(But see (1924) A I R 1924 Lah 389 (302) . 71 Ind Cas 805, Muham. mad Hassan v. Sohara. (It land is partly cultivated and partly uncultivated and the plaintid acquires title to the former by adverse possession, he also acquires title to the latter.)]

4. (1908) 35 Cal 961 (972) 6 Cal L Jour 785 : 12 Cal W N 127. Jogendranath Ras v. Balder Das Marwars.

(1906) 3 Cal L Jour 316 (331), Ananda Hart v. Secretary of State.

(1908) 7 Cal L Jour 414 (423) . 12 Cal W N 273 : 3 Mad L Tim 212, Marga Shamsher Bahadur v. Kung Behart Lall.

(1919) A I R 1919 Cal 762 (795): 47 Ind Cas 315 (S B), Shib Chandra Roy v Harendra Lal Ras. (1924) A I B 1924 Cal 855 (863) : 51 Cal 669 : 78 Ind Cas 679, Suresh

Chandra v Shits Kanta. (1925) A I R 1925 Cal 270 (271) : 61 Ind Cas 279, Girish Chandra Pal v.

Baskuntha Nath.

(1925) A I R 1925 Cal 981 (983) 85 Ind Cas 594, Abboy Sankar v. Satyendra Prasanna.

(1935) A I R 1935 Cal 760 (761) 159 Ind Cas 752, Bhabani Prosanna Lahiri v Manindra Chandra Roy.

(1928) A I R 1928 Oudh 470 (471) . 110 Ind Cas 569, Mohammad Hussam Alı v. Harnath Kuer. (1930) A I R 1930 Pat 20 (23): 124 Ind Cas 631, Shyam Kreshto Shaw v.

Ganesh Kakar. 5. (1920) A I R 1920 Mad 295 (301): 58 Ind Cas 689, Secretary of State v.

Venkatanarasımha Naidu. (Held, in the circumstances of the case that the adverse possessor was in possession of the whole)

connected or interdependent that the possession of either of Arts, 142 & 144 them can be treated as nossession of the other. 8

- Notes 12-14
- 2. Where a tract of hand with a defined boundary has been throughout claimed by a person as owner and acts of ownership have been done upon various portions of it, such acts of emovment may be accepted as evidence of the possession of the whole 7
- 3. Where the defendant worked certain quarties belonging to the phintiff in all parts of the land openly without objection or opposition, it was held that they worked the quarries in such a way as to prove possession of the whole.8
- 13. Possession of house is possession of site. The possession of a house is also the possession of the site on which that house stands and if the house has been in adverse possession for more than twelve years, a suit for the recovery of the site is barred.1
- 14, Plaintiff only in constructive possession-Dispossession or discontinuance of possession. - As has been seen in Note 9 ante, a dispossession or a discontinuance of possession necessarily involves the position that the plaintiff must have been in actual possession or possession in fact and must have been duven out or must have gone out of such possession. Where therefore the plaintiff is only in constructive possession or possession in law of the property. there can be no dispossession or discontinuance possible in the sense in which it is used in Article 142. But there may, nevertheless, be an adverse actual possession of such property. Thus, where the owner of land makes a grant of the surface rights thereof to another, he remains, as has been seen in Note 11 ante, in the eye of law in possession of the subsoil constructuely But a third person may without right work mines in the subsoil and this would clearly be in actual adverse possession. A suit by the owner for possession of the subsoil by driving out the intruder would be governed, not by Article 142 but by Article 144 1

dra v Shits Kanta.

Note 13

^{6. (1924)} A I R 1924 Cal 855 (861) 78 Ind Cas 679 51 Cal 669, Suresh Chan-

^{(1935) 164} Ind Cas 452 (455) (Call), Durgaram Chaudhury v Amreta Chandra.

^{7 (1927)} A I R 1927 Lah 753 (754) 99 Ind Cas 698, Nursam Din v Ala Mohammad

^{(1886) 9} Mad 285 (304, 305) Smasnbramanya v Secretary of State.

⁽¹⁹²⁵⁾ A I R 1925 Sand 201 (203) 82 Ind Cas 861, Ramzan v Fahr Muhammad

^{(1911) 9} Ind Cas 9 (10) 34 Mad 353, Subramania Pillat v Secu of State. 8 (1927) A I R 1927 Cal 956 (960) 55 Cal 35 106 Ind Cas 117, Raseswar Prosad v Bhupendra Narayan

^{1. (1910) 6} Ind Cas 683 (683) (Mad), Nuradin Kasım v Morris Sebastian Pereura.

^{1, (1931)} A I R 1931 P C 162 (164) 132 Ind Cas 610 58 Ind At p 228 - 59 Cal 80 (P C), Bhupendra Narayan . Rajeswar Prosad

15. Principle that possession follows title.— It is a fundamental principle that possession is presumptive evidence of a seisin in fee until the contrary is shown. In Jones v. Smith, Vice-Chancellor Wigram observed that "possession is prima facie evidence of a seisin in fee," and in Aster v. Whithock, Fochburn, C. J., Observed "I take it to be established authority that possession is good against all the world evecpt the person who can show a better title than the one in possession."

Possession 1s, therefore, prima facie a good title against all but the true owner, and this is recognised by Section 110 of the Evidence Act which runs as follows:

(1925) A I R 1925 P C 42 (43): 4 Pat 244 52 Ind App 109: 66 Ind Cas 289 (P C), Satya Niranjan v. Ram Lat.

Note 15

- (1882) 6 Bom 215 (224): 6 Ind Jur 416 (F B), Pemraj Bhatani Ram v. Narayan Shuram.
- (1863) 10 Moo Ind App 47 (58) 2 Sar 55 (P C), Zamındar of Ramnod v. Zamındar of Yethapooram. (In the absence of clear title in the detendant, the plaintiff is entitled to succeed on his prior long possession if dispossessed—4 in possession for 20 years dispossessed by B—Buit by A
 - being sufficient proof of title) (1930) A I R 1930 Cal 411 (418): 126 Ind Cas 769, Taraheswar Pal v. Saissh

against B-Neither party showing title-A's possession must prevail as

- Kanta Roy, (1936) A I R 1936 Bom 201 (209) 163 Ind Cas 632, Govindbhas v. Dahya-
- bhas. (Such presumption is rebuttable)
 (1915) A I R 1915 Cal 128 (128) . 41 Cal 394 . 25 Ind Cas 76, Adhar Chandra
 - v. Dibakar Bhuyan. (1867) 7 Suth W R 485 (486), Gopeenath Doss v. Dyanidhee Sundura Mohanattur.
 - (1929) A I R 1929 Cal 149 (157): 118 Ind Cas 566, Khanlamoya Debi v. Hradayananda Bhattacharjee.
 - (1885) 9 Mad 285 (304), Suasubramanya v Secretary of State.
- (1866) 6 Suth W R 82 (63), Gooroo Pershad v. Byhunto Chunder Roy. (Evidence of possession and enjoyment is good evidence of title as against the real owner only where it has been undisputed and continuous.)
 - (1912) 16 Ind Cas 955 (956) (Mad), Goralaswamy Chetty v. Secretary of with respect

 - Mookerjee. (1872) 17 Suth W R 490 (492), Lallee Singh v. Mt. Amrit Kooer.
 - [Sec (1868) 9 Suth W R 98 (100), Mt. Wooseerun v. Noorul Jan.]
- 2. (1811) 58 R R 22 (31) : 1 Hare 43 : 11 L J Ch 83. 3. (1865) 148 R R 598 (609) 14 W R (Eng) 26 : L R 1 Q B I : 35 L J Q B 17 : 11 Jur (8 8) 925 , 13 L T (N 8) 251
- (1882) 6 Bom 215 (222, 223). 6 Ind Jur 416 (F B), Pemraf Bhatani Ram v Narayan Shuram.
- (1908) 10 Dom L R 571 (578), Bhagwant Singh v. Secretary of State.
 (1904) 27 All 169 (171) 1 All L Jour 625: 1904 All W N 222, Pahlwan Singh v Ram Bharose, (It is an interest in the property which is heritable and alterable)
 - (1922) A I R 1922 All 277 (278): 66 Ind Cas 529, Rameshwar Dube v. S. H. Dube.
 - (1889) 1889 Bom P J 309, Sakalchand v. Sundarlal,

Note 15

"When the question is whether any person is owner of Arts. 142 & 144 anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."

The converse of the above principle is also a well recognised principle, namely that title ordinarily carries with it the presumption of possession and that, where the question is as to who was in possession of a land, the presumption is that the true owner was in possession, in other words, that possession follows title.5 This,

- (1896) 1896 Bom P J 200, Mt Gatabas v. Dattubowa.
- (1912) 15 Ind Cas 97 (98, 99) (Mad), Admarayana Iyer v. Krishnan.
- (1929) 118 Ind Cas 680 (680) (Nag), Nago v Rajeshuar Sansthan Ahola.
- (1916) A I R 1916 All 241 (242) . St Ind Cas 952, Anand Sarun v Chawna. (Plaintiff proving title-Defendant's possession though long, not proved to be adverse to plaintiff-Plaintiff decreed possession)
- (1902) 24 All 157 (150) 1901 All W N 201, Gebind Presad v. Mohan Lal
- (Do). (1885) 9 Bom 137 (140), Ramachandra Apan v. Balan Bhaurav
- (1925) A I R 1925 Med 1021 (1022) , 91 Ind Cas 503, Gangayya v Satyanarayana (This delence cannot avail a defendant when the true owner
 - himself is also a party to the suit) [See also (1869) 9 Suth W R 120 (120, 121), Puran Chunder v.
- Protap Narain] 5. (1847) 76 R R 794 (799) 2 Ex 803, 18 L J Ex 456, Jones v Chapman (Per
 - Maule J) (1994) A I R 1934 Bom 207 (209): 149 Iud Cas 882 & 885 : 58 Bom 397 & 406 (F B), Krishnaji v. Madhusa.
 - (1927) A I R 1927 Mad 1094 (1095) 99 Ind Cas 971, Kunht Moidin v Pak
 - kar Kuttu (1902) 26 Bom 410 (416) 4 Bom L R 28, Vithaldas v. Secretary of State.
 - (1925) A I R 1925 Bom 27 (27) 76 Ind Cas 591, Secretary of State v. Lakshmishankar (The open space between the houses presumably
 - belongs to the owners of the surrounding houses) (1904) 8 Cal W N 876 (980), Kasturs Singh v Bissen Pragas Narain Singh (1924) A 1 R 1924 Cal 977 (978) 79 Ind Cas 1038, Eals Prosanna Bahadurs Hemania Kumas Debs
 - (1931) A I R 1931 Cal 501 (502) I31 Ind Cas 319, Jira Bewa v Uma Charan Saha. (It is not necessary that it must be shown that the
 - land was incapable of enjoyment before the presumption is drawn) (1932) A I R 1932 Cal 634 (637, 638) 141 Ind Cas 320, Galstaun v. Profulla Kumar De.
 - (1933) A I R 1933 Cal 193 (203) 142 Ind Cas 525, Sarat Chandra v. Bhoopendra Naram (Newly formed Chur lands—Both parties scrambling for possession—Possession follows title)
 - (1926) A I R 1926 Lah 13 (14) 89 Ind Cas 995, Ismail v Ibrahim
 - (1927) A I R 1927 Nag 37 (37) 97 Ind Cas 1006, Tularam Bajuao v. Tuharam Yeshwant
 - (1920) A I R 1920 Oudh 50 (52) 56 Ind Cas 720, Janks Saran v Wadow of Mahomed Sadıq
 - (1925) A I R 1925 Oudh 170 (171) 81 Ind Cas 589, Subdhun Pande v. Mahesh Prasad
 - (1926) A I R 1926 Oudh 528 (529) 96 Ind Cas 225, Sidhnath v Barjor Singh (Plaintiff can invoke the presumption that possession follows title, if he proves ownership up to the time immediately preceding 12 years where manifest acts of enjoyment cannot be proved
 - (1927) A I R 1927 Oudh 141 (142) 1 Luck 441 29 Oudh Cas 395 98 Ind Cas 704, Barjor Singh v Sidh Nath (A I R 1926 Oudh 528, Overrulcd)
 - (1910) 7 Ind Cas 700 (701) (Cal), Ray Krishna v. Multaram Das

45. Principle that possession follows title. — It is a fundation from the property of the possession is presumptive evidence of a seisin in fee until the contrary is shown. In Jones v. Smith, Vico-Chancellor Wigram observed that "possession is prima facie evidence of a seisin in fee," and in Asher v. Whitlock, Cockburn, C. J., observed "I take it to be established authority that possession is good against all the world except the person who can show a better title than the one in possession."

Possession is, therefore, prima facie n good title against all but the true owner, and this is recognised by Section 110 of the Evidence Act which runs as follows:

(1925) A I R 1925 P C 42 (43) . 4 Pat 244 : 52 Ind App 109 : 86 Ind Cas 289 (P O), Salya Nyranjan v. Ram Lal

- (1882) 8 Bom 215 (224) · 6 Ind Jur 416 (F B), Pemraj Bhatani Ram v. Narayan Shuram
- (1863) 2 North Annual (189). 2 Say 65 (P.O). Zamundar of Rammad v. Common and the Common of Pethodoroum. (In the absence of clear title on the decided and, the plantiff is entitled to succeed on this prior long possession for 20 years dispossessed 4 M=0 possession for 20 years dispossessed by M=0 the by A against B=Neither party showing title=A's possession must provail as being synficient proof of title.)
 - (1930) A I R 1930 Cal 411 (418): 126 Ind Cas 769, Tarakeswar Pal v. Satish Kanta Roy.
- (1936) A I R 1936 Bom 201 (209) . 163 Ind Cas 632, Govindbhas v. Dahyabhas (Such presumption is rebuttable)
- (1915) A I R 1915 Cal 128 (128): 41 Cal 394. 25 Ind Cas 76, Adhar Chandra v. Dibahar Bhuyan.
 - (1867) 7 Suth W R 485 (486), Gopeenath Doss v. Dyanidhee Sundura Mohanattur. (1929) A R 1929 Cal 149 (157) · 118 Ind Cas 566, Khantamovi Debi v.
 - Iridayananda Bhallacharyee.
- (1868) ingh. (1869) ingh.
 - Kaslas Nath Sidhanta. (1869) 12 Suth W R 315 (316), Joykishen Mookerjee v. Raj Kishen Mookerjee.
 - (1872) 17 Suth W R 490 (492). Lallee Singh v. Mt. Amrit Kooer. (See (1868) 9 Suth W R 98 (190), Mt. Woozeerun v. Noorul Jan.)
- 2. (1841) 58 R R 22 (31): 1 Hare 43: 11 L J Ch 83.
- (1865) 148 R R 598 (602)
 14 W R (Eng) 26 · L R 1 Q B 1 : 35 L J Q B 17 :
 1J ut (8 is) 925 ; 13 L T (ix is) 25 ;
 (1852) 6 Bom 215 (222, 223)
 6 Ind Jur 416 (F B), Pemraj Bhavani Ram
 - v. Secretary of State. 1901 All W N 222, Pahlwan
 - neutrang and alienable)
 (1922 A I R 1922 AH 277 (278) · 66 Ind Cas 529, Rameshuar Dube v. S. H.
 Dube.
 - (1889) 1889 Bom P J 309, Sakalchand v. Sundarlal,

"When the question is whether any person is owner of Arts. 142 & 144 anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner "

Note 15

The converse of the above principle is also a well recognised principle, namely that title ordinarily carries with it the presumption of possession and that, where the question is as to who was in possession of a land, the presumption is that the true owner was in possession, in other words, that possession follows title.5 This,

- (1596) 1896 Bom P J 200, Mt. Gitabai v. Dattubou a.
- (1912) 15 Ind Cas 97 (93, 99) (Mad), Admarayana Iyer v. Krishuan.
- (1929) 118 Ind Cas 680 (680) (Nag), Nago v. Rajeshuar Sansthan Ahola.
- (1916) A I R 1916 All 241 (242) . 34 Ind Cas 952, Anand Sarup v. Chawna. (Plaintiff proving title-Defendant's possession though long, not proved to be advered to plaintiff-Plaintiff decreed possession.)
- (1902) 24 All 157 (159) 1901 All W N 201, Gobind Presad v. Mohan Lal
- (1885) 9 Bom 137 (140), Ramachandra Apan v. Balan Bhaurai.
- (1925) A I R 1925 Mad 1021 (1022) 91 Ind Cas 503, Gangawa v Satuanarayana (This defence cannot avail a defendant when the true owner himself is also a party to the suit)
 - (Sec also (1869) 9 Suth W R 120 (120, 121), Puran Chunder v. Protap Narain]
- 5 (1847) 76 R R 794 (799) 2 Ex 803 . 18 L J Ex 456, Jones v. Chapman (Per Maule J)
- (1934) A I R 1934 Bom 207 (209) 149 Ind Cas 882 & 885 : 58 Bom 897 & 408 (F B), Krishnaji v. Madhusa.
 - (1927) A I R 1927 Mad 1094 (1995) . 99 Ind Cas 971, Kunha Mordin V. Pak-
 - Lar Kuttu (1902) 26 Bom 410 (416) 4 Bom L R 28, Vithaldas v. Secretary of State.
 - (1925) A I R 1925 Bom 27 (27) 76 Ind Cas 591, Secretary of State v. Lalshmishankar (The open space between the houses presumably belongs to the owners of the surrounding houses)
- (1901) 8 Cal W N 876 (890), Kasturs Singh v Bissen Pragas Narain Singh. (1924) A I R 1924 Cal 977 (978) 79 Ind Cas 1039, Kale Presanna Bahadura v Hemanta Kumais Debs
- (1931) A I R 1931 Cal 501 (502) 134 Ind Cas 819, Jara Bewa v Uma Charan Saha (It is not necessary that it must be shown that the land was incapable of enjoyment before the presumption is drawn.)
- (1932) A I R 1932 Cal 634 (637, 638) 141 Ind Cas 320, Galstaun v. Profulla Kumar De
- (1933) A I R 1933 Cal 193 (203) 142 Ind Cas 525, Sarat Chandra v. Bhoopendra Naram (Newly formed Chur land, -Both parties scrambling for possession -Possession follows title)
- (1926) A I R 1926 Lah 13 (14) 89 Ind Cas 995, Ismail v Ibrahim.
- (1927) A I R 1927 Nag 37 (37) 97 Ind Cas 1006, Tukaram Bajuac v. Tuharam Yeshwant
- (1920) A I R 1920 Oudh 50 (52) . 56 Ind Cas 720, Janks Saran v. Widow of Mahomed Sady
- (1925) A I R 1925 Outh 170 (171) 81 Ind Cas 588, Subdhun Pande v. Mahesh Prasad
- (1926) A I R 1926 Oudh 528 (529) 96 Ind Cas 225, Sidhnath v Barjor Singh. (Plaintiff can invoke the presumption that possession follows title, if he proves ownership up to the time immediately preceding 12 years where manifest acts of enjoyment cannot be proved)
- (1927) A I R 1927 Oudh 141 (142) 1 Luck 441 29 Oudh Cas 395 98 Ind Cas 704, Barjor Singh v. Sidh Nath (A I R 1926 Oudh 528, Overrulcil)
- (1910) 7 Ind Cas 700 (701) (Cal), Raj Krishna v. Multaram Das.

hower, is not always a presumption of law, which a Court is bound to draw in all eases. There is no provision corresponding to Section 110 of the Evidence Act providing that a person who has the title should be presumed to be in possession. But such a presumption may be drawn under Section 114 of the Evidence Act? which runs as follows.

"The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case."

In Kashinath v. Ganesh, Mr. Justice Fawcett observed as follows:

"It is not an absolute presumption of law, but a purely discretionary one depending upon the particular circumstances of each case. This conforms with the provisions of the Evidence Act, for though Section 110 recognised a presumption that a person in possession has also a good title, there is no corresponding Section saying that the person with the title should be presumed to be in possession. This presumption is one that can only come under Section 114 of the Evidence Act, which allows the Court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events."

The presumption is thus one of fact and the Court has a discretion to draw it on not having regard to the circumstances of the case of the exercise of discretion of every kind, this discretion also must be exercised on judicial principles. The presumption will not, of course, apply where there is definite evidence to the

```
(1909) 4 Ind Cas 442 (447) (Cal), Bidhumukhi Dasi v. Jilendra Nath Roy. (1918) 45 Ind Cas 217 (217) (Nog), Raghoba v. Palhoba.
```

(1918) 45 Ind Cas 217 (217) (Nag), Raghoba v. Palhoba. (1909) 4 Ind Cas 619 (620) (Mad), Sundara Sastrial v. Govinda Mandarovan.

(1891) L R 2 Q B 18 (27) 63 L J Q B 513 : 9 R 407 : 70 L T 788 . 1 Manson 181, Ramsay v. Margarett.

(1928) 111 Ind Cas 376 (377) (Oudh), Sant Balsh v. Ram Nath [See also (1927) A I R 1927 Lah 777 (778) : 100 Ind Cas 336, Dullah

v. Mt. Sardaran (1914) A I R 1914 Upp Bur 44 (45): 27 Ind Cas 981, Nga Pov.

Nga So Pe. (1931) A I R 1934 Lah 520 (529) · 143 Ind Cas 620, Aya Singh v. Latif.

(1903) 9 Suth W R 556 (557), Shahaboodeen Chouchiry v. Ram Guily Chucherbuily.] 6. (1927) A I R 1927 Mad 509 (511) 101 Ind Cas 813, Venkala Somayajulu v.

Suryanarayana.

7. (1923) A I R 1923 Bom 361 (363) . 77 Ind Cas 506, Kashmath Gyanoba v. Ganesh Sitaram

8. (1923) A I R 1923 Bom 361 (362, 363) . 77 Ind Cas 506

8a (1921) A I R 1921 Pat 153 (160) 53 Ind Cas 774 : 5 Pat L. Jour 721, Inder Lali v. Ram Surat Kuer.

[See also (1915) A I R 1915 Cal 831 (834) : 27 Ind Cas 802, Sarojini Debi v. Kirtibash Das]

⁽¹⁹¹⁷⁾ A I R 1917 Pat 471 (473) 41 Ind Cas 114 2 Pat L Jour 506, Midnapore Zamindary Co. Lid v. Panday Sardar.

contrary. ⁵b In Runjeet Ram Panday v. Goburdhun Ram Panday, ⁹ Arts. 142 & 144 their Loidships of the Privy Council observed as follows . Note 15

"Now the ordinary presumption would be that possession went with the tritle. That presumption cannot be, of course, of any avail in the presence of clear evidence to the contrary; but, where there is strong cudence of possession, as there is here, on the part of the respondents—opposed by evidence, apparently strong also on the part of the appellant —there. Lordshaps think that in estimating the weight due to the evidence on both sides, the presumption may under the peculiar circumstances of this case be regarded."

In Rant Hemanta Kumart Debt v. Maharajah Jagadindra Nath Roy Bahadur, 10 their Lordships of the Privy Council again expressed a similar view, They said.

"It is for the appellant, as plantiff in a suit for ejectment, to prove possession prior to the dispossession which she alleges at the same time their Lordships consider that in this question of evidence the initial fact of the appellant's title comes to her aid with greater or less force according to the circumstances established in the evidence"

In the case of open, waste or jungle lands, which do not admit of enjoyment by acts of ownership in the same manner as other property, 11 or where there is no evidence let in on either side of any

- 5b(1929) A I R 1929 Lah 34 (36) 111 Ind Cas 533, Nand Lat v Lahre (1922) A I R 1922 Cal 557 (565) 67 Ind Cas 673, Rakhalchandra v Durga
- (1926) A T R 1926 Lab 393 (393) 91 Ind Cas 1048, Bahadur v Saghar 9, (1873) 20 Suth W R (F C) 25 (30) 14 Moo Ind App 203 9 Ecng L R 400 2 Suther 479 2 Sut 731 (F C)
- 10. (1906) 16 Mad L Jour 272 (273) 10 Cal W N 630 1 Mad L Tim 135 3 All L Jour 863 8 Born L R 400 (P C).
- 11, (1922) A I R 1922 Born 243 (244) 66 Ind Cas 764 46 Born 920, Muhamad Sahib Ibrahimsahib v, Tilokchand Abheerchand (Open sites)
 - (1925) A I R 1925 Bom 477 (478) 89 Ind Cas 891, Ulanappa Basawanappa v. Gadigewa Hugar.
 - (1905) 12 Cal W N 273 (277, 279) 3 Mad L Tm 212 7 Cal L Jour 414, Mirza Shamsher Bahadur v Munshi Kunj Behari Lal
 - (1917) A I R 1917 Cal 802 (804) 28 Ind Cas 547, Promotha Nath Roy v. Kishore Lal Shah (Vacant land)
 - (1916) A I R 1916 Lah 133 (133)
 35 Ind Cas 120, Chain Sukk v. Gopi Ram
 (1917) A I R 1917 Luh 201 (204)
 30 Ind Cas 971, Moolchand v. Amarnath
 (1926) A I R 1926 Lah 615 (616)
 97 Ind Cas 705, Rulus v. Nur Muham-
 - mad (1928) A I R 1928 Lah 895 (898) 115 Ind Cas 534, Ghulam Mohammad v. Fatch Khan (Vacant land)
 - (1939) A 1 R 1929 Lab 34 (35) 111 Ind Cas 533, Nand Lat v Lahra
 - (1929) A I R 1929 Lah 669 (670) 127 Ind Cas 11, Bhalla Singh v. Jagat Singh
 - (1930) A I R 1930 Lah 76 (77) 120 Ind Cas 531, Mahomed Saday v Allah Bahah
 - (1930) A I R 1936 Lah 205 (203) 162 Ind Cis 330 17 Lih 449, Shahbar Khan v Banne Khan (The more fait that a tresposer has taken possession of a partism of a vacuum sale cannot affect the constructive possession of the real owner on the partion not tre-passed appm.)

- (1925) 49 Mad L Jour 75 (75) (N R C)
- (1924) A I R 1924 Mad 676 (676): 79 Ind cas 1011, Srinirasachariar v. Ragharacharia.
- (1927) A I R 1927 Mad 509 (510) . 101 Ind Cas 813, Venhatasomayajulu v. Suryanarayana.
- (1931) A I R 1931 Mad 282 (283) · 130 Ind Cas 845, Secugan Chetty v. Kannappa Chetty. (A I R 1922 Cal 557, Followed.)
- (1933) A I R 1933 Mad 871 (872) : 147 Ind Cas 680, Suranna v. Subbarayadu. (Vacant land)
 - (1938) A I R 1938 Mad 454 (455) : 178 Ind Cas 301, Atchayya v. Jalaluddin. (Do)
- (1919) A I R 1919 Oudh 199 (200) : 53 Ind Cas 683, Paddu v. Mahabur
- Prasad (1927) A I R 1927 Oudh 209 (209): 101 Ind Cas 714, Sadik Husain v. Mir Elizad Husain (Abadi land.)
- (1927) A I R 1927 Oudh 551 (551) · 102 Ind Cas 207, Imdad Husam v.
- Mt. Hardart Khanam. (Vacant laud.) (1924) A I R 1924 Pat 629 (632, 633) : 3 Pat 258 : 81 Ind Cas 669, Bannath
- v. Gorardhan. (Gora land.) (1929) A I R 1929 Pat 529 (529) : 122 Ind Cas 816, Gopal Sahu v. Ghan-
- shyam Das. (Parti land.) (1911) 10 Ind Cas 376 (390) (Cal), Pria Nath v. Mahendra Kumar.
- (1912) IS Ind Cas 39 (40) (Cal), Shideeswars Dasya v. Shashi Bhushan Chaudhri.
- (1924) 79 Ind Cas 692 (693) (Lab), Abdullah v. Girdhari.
- [1907] 1907 Pun Re No. 53 (page 228) · 1907 Pun L R No. 89 : 1907 Pun W R No. 120, Shahabal Shah v. Gantsh Das (Failure to cultivete unculturable land does not constitute abandonment).
- (1911) 1I Ind Cas 542 (543) (P C), Jagadindranath v. Hemantha Rumari Debi.
- (1867) 8 Suth W R 422 (423), Mahomed Ali v. Shurum Ali. (The fact that the land was lying waste does not of itself show that no one was in possession)
- (1869) Il Suth w P oer tocol star Pana -- F. -eem Baksh.
- (1871) 18 Suth Basheeroomissa.
 (1875) 23 Suth ha Pershad Singh.
- (1875) 24 Suth v. Bissambhur Roy Chondhry,
- (1917) A I R 1917 Lah 394 (394) 42 Ind Cas 412, Fatteh Khan v. Bisakhi Ram.
- (1916) A I R 1916 Nag 90 (92) · I3 Nag L R 25; 39 Ind Cas 54, Radhikadas v. Harmohan Lal. (Occasional stacking of grass, or tethering of animals on waste land does not amount to adverse possession)
- (1917) A I R 1917 Oudh 20 (23) * 41 Ind Cas 80, Ratival v. Bipin Chandia. (1929) A I R 1929 Oudh 489 (491) : 118 Ind Cas 431, Chatterpal Singh v.
 - Raghubir Singh. (1900) 4 Ind Cas 244 (246) . 33 Bom 712, Ganapati v. Raghunath.
- (1895) 1 Cal W N 199 (199) (S N), Probhakar Tshari v. Raja Baidhya Nath Pundit.
- (1897) 24 Cal 256 (257, 258): 1 Cal W N 304, Mohnn Mohan v. Promoda Nath.
- Nath. (1925) A I R 1925 Cal 981 (983) : 85 Ind Cas 594, Abhoy Sankar v. Satyendra Prasanna.
- [1927] A I R 1927 Cal 49 (50) 98 Ind Cas 849, Nanda Kumar v. Emdad Als.
 [1928] A I R 1929 Cal 194 (105) : 107 Ind Cas 95, Mohesis Chandra v. Hemendra Nath.
- (1884) 1881 Pun Re No. 49, Muhammad Yar v. Ghulam.
- (1901) 1901 Pun Re No 105, Ramzan Alix, Dasharat Ali. (The onus is in such s case shifted on to defendant to prove when his possession tecume adverse)
- (1914) A I R 1914 Lah 414 (415) . 25 Ind Cas 82, Mt. Naram Detv v. Billa. (1923) A I R 1923 Lah 25 (26) : 69 Ind Cas 4, Mansa v. Khusali Ram.

- acts of ownership, 11a or where there is no plea that the owner was Arts. 142 & 144
 - (1927) A I R 1927 Lah 230 (230) : 100 Ind Cas 51, Ganga Ram v. Hasun Shale.
 - (1927) A I R 1927 Lah 664 (664) : 103 Ind Cas 678, Jaman Singh v. Karam
 - (1928) A I R 1928 Lah 306 (307): 110 Ind Cas 857, Nur Muhammad v.
 - Carm. (1930) A I R 1930 Lah 303 (303) . 120 Ind Cas 792, Mangal Singh v. Als
 - (1934) A I R 1934 Lah 529 (530) 148 Ind Cas 820, Aya Singh v. Latif.
 - (1935) A I R 1935 Lah 507 (508) 157 Ind Cas 399, Raur Sam v Ghulab. (1916) A I R 1916 Mad 1025 (1025) 30 Ind Cas 191, Murugappa Mudaly v. Jagannath Payanım Garu.
 - (1934) A I R 1934 Mad 183 (184) : 149 Ind Cas 455, Palantappa Chetty v. Raman Chetty.
 - (1905) 8 Oudh Cas 177 (182), Sheo Naram Singh v. Bodal Singh.
 - (1920) A I R 1920 Oudh 215 (216) . 57 Ind Cas 538, Dan Bahadur Smoh v. Pirthipal Singh. (In the case of uncultivated lands such as tank lands surrounded by scattered trees of spontaneous growth, the presumption is that possession follows title)
 - (1926) A I R 1926 Oudh 393 (394) : 1 Luck 469 : 94 Ind Cas 1034, Hulas v. Barkatunnıssa
 - (1926) A I R 1926 Oudh 444 (446) . 95 Ind Cas 27 . 2 Luck 239, Parkasdas v Janks Ballabha Saran.
 - (1929) A I R 1929 Oudh 328 (330) 114 Ind Cas 815, Jagat at Sunch v. Md. Asgar Alı.
 - (1921) A I R 1921 Pat 158 (160) 58 Ind Cas 774, 5 Pat L Jour 724, Inder Lall v. Ram Surat Kuar.
 - (1921) A I R 1921 Pat 277 (278) ; 61 Ind Cas 78, Bahadur Ali Khan v.
 - Secretary of State. (1921) A I R 1924 Pat 629 (680, 633) . 8 Pat 258 : 81 Ind Cas 669, Ram-
 - nath Sarangi v Gobardhan Panday (1937) A I R 1937 Pat 422 (423) . 170 Ind Cas 385, Chandra Mohan Singh v Butu Mian.
 - (1917) A I R 1917 Low Bur 145 (147, 148) 8 Low Bur Rul 372 86 Ind Cas 249, Asha Bibs v Sulaiman Ismail Atcha.
 - (1909) 1 Ind Cas 252 (253) (Cal), Naram Chandra Smak v. Basant Eumary
 - (1912) 16 Ind Cas 623 (624) (Cal), Bhagwan Chandra Dey v. Dayal Hars
 - (1914) A I R 1914 Lah 133 (135) , 21 Ind Cas 972 (974), Pirthi v Ratti Ram. (In the case of Banjar, 1 e waste land, mete paper possession by means of decree and execution is sufficient possession
 - (1927) 106 Ind Cas 180 (131) (Lah). Smail v Gajjan (In a case of fallow land, possession must be taken to follow title for the purpose of adverse possession)
 - (1930) 126 Ind Cas 129 (130, 131) (Cal), Alabaksh Bhuyan v Bir Bihram Kishore Manikya.
 - (1920) A 1 R 1920 Pat 705 (707) 56 Ind Cas 314, Brahmanand Singh v. Dundbahadur Singh. (1939) A I R 1938 Oudh 214 (216) . 177 Ind Cas 52, Maneur Als Ehan v.
 - Peteshuars Prasad Suigh. (1928) A I R 1928 Cal 118 (121, 122) . 105 Ind Cas 369, Gopal Chandra v.
 - Monmohins Dass (1938) A I R 1938 Mad 454 (455) 178 Ind Cas 301, Atchayya Patrudu v.
 - Jalaluddin Sahib
 - 11a (1934) A I R 1934 Bom 207 (210) 58 Bom 397 & 406 149 Ind Cas 882 & 885 (F B), Krishuan Shrinnas . Madhusa Appansa
 - (1919) A I R 1919 Pat 207 (209) 51 1nd Cas 801 4 Pat L Jour 463, Bhikhad Bhunjan v Urendia Nath.

Note 15

Arts. 142 & 144 not in possession, "16 or where the evidence is equally strong on both sides,12 the presumption may properly be drawn in fayour of the person having the title. But where the owner alleges definite acts of ownership and fails to prove them,13 or where all the circumstances are such as to render it natural for an owner in possession of land to exercise manifest acts of enjoyment thereof during a given period and he fails to prove such facts,11 or where the evidence let in by the person having the title is totally false and unreliable,15 the Court is not bound in draw the presumption that possession follows title

> It has, however, been held in some cases that the presumption can be drawn only when the evidence is strong on both sides and not when it is equally unworthy of credit. It is submitted that the decision in Ranject Ram Pandey's case,9 referred to above, which is generally relied on in support of the above view, does not really support that view. In the undermentioned cases 164 the presumption

- (1888) 15 Cal 353 (356), Syam Lal Sahu v. Luchmun Chowdhry.
- 11b(1926) A I R 1926 Nag 197 (199) : 90 Ind Cas 196, Daulat v. Ramarpa. 12. (1929) A I R 1923 Cal 228 (233) . 70 Ind Cas 555, Promode Kumar Roy v. Madan Mohan Saha.
- 18. (1880) 5 Cal L. R 481 (483), Ram Bhandhu v. Kusu Bhattu.
 - (1923) A I R 1923 Cal 286 (287) : 66 Ind Cas 914, Ram Rajan Mandal v. Nalmona Choudhry.
 - (1922) A I R 1922 Cal 557 (566) : 67 Ind Cas 678, Rahhal Chandra Ghose v. Durgadas Samantha.
 - (1928) A I R 1928 Cal 765 (767) . 117 Ind Cas 606, Harbut Ray Chamaria
 - & Co. v. U jir Shaikh. (1922) A I R 1922 Cal 224 (225) : 67 Ind Cas 1005, Behars Lal v. Nrstyananda. (Both parties alleging definite acts of ownership-Presumption that possession follows title mapplicable. The case must be decided on
- evidence of possession) 14. (1926) A I R 1926 Ondh 528 (529) : 96 Ind Cas 225. Sidh Nath v. Barrer Singh.
- 15. (1899) 26 Cal 114 (118), Bishun Churn Roy v. Jogendra Nath Roy. (1921) A 1 R 1921 Pat 237 (239, 213) . 62 Ind Cas 1 : 6 Pat Jour 478 (F B).
 - Shua Prasad Singh v. Hira Singh. (1922) A 1 R 1922 Cal 557 (565) , 67 Ind Cas 673, Rakhal Chandra Ghose v.
 - Durgadas Samantha. (1931) A I R 1931 Mad 282 (283) : 130 Ind Cas 845, Sevugan v. Kannappa. (1933) 146 Ind Cas 448 (449) (Pat), Guh: Ram v. Adalat Mahato.
- 16. (1922) A I R 1922 Cal 557 (566) : 67 Ind Cas 673, Rahhal Chandra Ghose v. Durgadas Samantha,
 - (1916) A 1 R 1916 Pat 809 (310) . 85 Ind Cas 554 ; 1 Pat L Jour 146, Fahira Lal Sahu v. Ram Charan Lal. (Except in cases of waste or jungle land or land under water)
- 16a (1931) A 1 R 1931 Mad 614 (646): 54 Mad 622 . 183 Ind Cas 9, Ramanathan v. Lakshmanan
 - (1927) A I R 1927 Mad 509 (510) : 101 Ind Cas 813, Venhata Somayajulu v. Survanaravana.
 - (1928) A 1 R 1928 Cul 765 (766, 767) : 117 Ind Cas 606, Harbut Ray Chamaria & Co v. Ujir Shauk. (Where evidence of possession on either side is not satisfactor, or not quite satisfactory, the party who has succeeded in proving his title is entitled to rely upon the preaumption that possession follows title)

was applied even in eases where the evidence was unsatisfactory on Arts. 142 & 144 both sides.

Note 15

It has also been held in some cases 17 that the presumption can be drawn only in respect of waste and jungle lands and not in respect of property which is capable of use and emovment, in some cases that the presumption should not be applied where the plaintiff has to prove his possession at a particular time. 18 and in some cases 19 that the presumption cannot be applied where no evidence is let in on either side. It is submitted that none of these views, in so far as they restrict the power of the Court under Section 114 of the Evidence Act to exercise its discretion, by confining it to particular

- (1908) 12 Cal W N 273 (280) 3 Mad L Tim 212 7 Cal L Jour 414, Marca Shamsher Bahadur v Munshi Kung Behari
- (1919) A I R 1919 Pat 207 (209) . 51 Ind Cas 801 4 Pat L Jour 463, Bhihad Bhunjan Narain Tewari v Uvendra Nath.
- (1922) A I R 1922 Pat 432 (434) 67 Ind Cas 631 2 Pat 1, Tean Sahu v. Mulchand Saku.
- (1910) 6 Ind Cas 392 (397) (Cal), Nauab Bahadur of Murshidabad v. Gopinath Mandal
- (1695) 12 Cal 39 (41), Dharm Singh v Hur Pershad Singh
- 17 (1678) 3 Cal 768 (770) 2 Cal L R 364, Mohima Chunder Deu Sirear v. Hurro Lal Sircar
 - (1918) A I R 1918 Cal 544 (545) 41 Ind Cas 456, Baroda Prasad v. Man. matha Nath.
 - (1922) A I R 1922 Cal 557 (566) 67 Ind Cas 673, Rakhal Chandra Ghose v. Durgadas Samantha
 - (1928) A I R 1928 Cal 765 (766) 117 Ind Cas 606, Harbut Ran Chamaria & Co v Ujir Sheikh
 - (1921) A I R 1921 Lah 202 (203) 59 Ind Cas 891, Mahmud v Ude Bhan
 - (1924) A I R 1924 Lah 276 (277) 69 Ind Cas 427, Sampat Ram v Ganga Datt ('Possession goes with title' applies where land is actually vacant -Otherwise presumption exists in favour of person in actual possession)
 - (1936) A I R 1926 Lah 383 (383) 91 Ind Cas 1948, Bahadur v. Sanhar
 - (1987) A I R 1937 Nag 129 (130) I L R 1937 Nag 254 171 Ind Cas 271, Shanhersa & Punamehand
 - (1917) A I R 1917 Oudh 20 (23) 41 Ind Cas 80, Ratipal Bipin v Bepin Chandra Chattern
- 18 (1915) A I R 1915 Cal 675 (677) 26 Ind Cas 436, Kalthanand v Bipro Das, (Purporting to follow 16 Ind App 23-That decision does not give rise to any such view }
- 19, (1904) 9 Cal W N 111 (116), Madhabi Sundari Dassya . Gaganendra Nath Tagore
 - (1925) A I R 1925 Cal 1230 (1232) 83 Ind Cas 567, Panchanan Sarkar v. Basanta Kumars
 - (1916) A I R 1916 Pat 309 (309, S10) 35 Ind Cas 554 1 Pat L Jour 146, Takira Lal v Rain Charan (1921) A I R 1921 Pat 237 (239, 243) 62 Ind Cas I 6 Pat L Jour 478 (F B),
 - Shua Prasad Singh v Hira Singh (1933) 146 Ind Cas 448 (449) (Pal), Guhs Ram Singh v. Adalat Mahto. (Following A I R 1921 Pat 237)
 - (1922) A I R 1922 Pat 432 (435) 2 Pat 1 67 Ind Cas 631, Tian Sahu v. Mulchand Sahu

Arts. 142 & 144 Notes 15-16

lands or to particular circumstances, can he accepted as correct oo principle.²⁰

The doctrine that possession follows title has, io some cases, to be applied as a matter of law and not as a matter merely of discretion under Section 114 of the Evidence Act. Thus, where land is submerged under water, and is thus incapable of being possessed by either party, the law will regard the owner as in possession. In The Court is bound to draw this presumption in such cases. In Bhupendra v. Rajeswar, the Privy Council observed:

"The doctrine that possession follows title is well established. So, while lands are submerged, constructive possession is with the true owner and that, though the physical possession immediately prior to the diluviation has been with the adverse claimant."

In Satish Chandra Joardar v. Birendra Nath,23 where the question was as to who was in possession of submerged land to which plaintiff had proved title, the Privy Council observed:

"It was unnecessary for the plaintiffs to prove 'actual possession' in the seose of occupation after the submergence, as their possession in law continued notil they were dispossessed."

Waste and uncultivated land cannot be regarded as land *neapable of being enjoyed in the sense in which submerged land can be said to be incapable of being enjoyed. As has been seen already, the Court is not bound to draw the presumption in such cases, though the Court will, under Section 114 of the Evidence Act, draw the presumption having regard to the nature of the land.

16. Adverse possession, what is.—The expression "adverse possessioo" means a hostile possessioo, that is a possession which is expressly or impliedly in denial of the title of the true oweer. In Ejas Ali v. Special Manager, Court of Wards, their Lordships of the Privy Council observed:

"The principle of law is firmly established that a person who bases his title on adverse possession must show by clear and

 (1931) A I R 1931 Cal 501 (502), 13t Ind Cas 319, Jura Bena v. Uma Charan Saha. (Principle not confined to particular land)

See also cases cited in Foot-Note (11a).
21. (1915) A I R 1915 Oudh 201 (205) 18 Oudh Cas 43: 28 Ind Cas 855, Drifraf
Singh v. Ganga Balsh Singh.

(1921) A I R 1921 Pat 234 (235) : 57 Ind Cas 744, Gajadhar Prasad v. Mst Dullyn Gulab Kuer.

(1920) A I R 1920 Pat 705 (707): 56 Ind Cas 311, Brahmanand Singh v. Dundbahadur Singh.

22 (1931) A I R 1931 P C 162 (164) 50 Ind App 228 50 Cal 80 : 132 Ind Cas G10 (P C)

21.

Saha

Note 16 1 (1935) A I R 1935 P C 53 (56): 151 Ind Cas 27 (P C).

unequivocal evidence that his possession was hostile to the real Arts, 142 & 144 owner and amounted to a denial of his title to the property claimed."

Note 16

In Arunachalam v. Venlatachalpathy,2 their Lordships of the Privy Council held that the possession of the defendant was adverse to the plaintiff, masmuch as the plaintiff had stood by while the defendant continued to possess "in practical contravention of the plaintiff's alleged rights." Dr Markby in his Elements of Law observes that possession to be adverse must be possession "by a person u ho does not acknowledge the other's rights but denies them."

The principle that in order to constitute adverse possession the possession must be in denial of the title of the true owner, has been recognised in numerous decisions, though expressed in different ways. Thus, it has been held that in order to constitute adverse possession the acts of the person in possession should be irreconcilable with the rights of the true owner,5 that the person in possession must claim to be so as of right as against the true owner.6 that

- 2, (1919) A I R 1919 P C 62 (68) . 43 Mad 253 46 Ind Apr 204 . 53 Ind Cas 245 (P C)
- 3. Markhy's Elements of Law , 2nd Edition, Chapter 10.
- 4. (1914) A I R 1914 411 547 (550) 27 Ind Cas 35, Asad Ali v Anand Sarup. (1907) 29 All 133 (130) 1906 All W N 805 3 All L Jour 760, Bhadder v. Khair-ud-din Hussain,
 - (1937) 167 Ind Cas 801 (801) (Nag), Raman Gujar v. Kunwarjee Gujar, (1927) A I R 1927 Oudh 141 (142) . 1 Luck 441 29 Oudh Cos 395 , 98 Ind
 - Cas 704, Barjor Singh v Sidh Nath (1929) A I R 1929 Oudh 493 (434) 5 Luck 380 122 Ind Cas 332, Sai Narain
 - Mistr v Deputy Commissioner, Ajodkia Estale.
 - (1905) 5 Cal L Jour 62 (63), Charian Singh v Sadhars Monim. (1881) 1891 All W N 143 (143), Gharam v. Gopal Singh
 - (1896) 20 Mad 6 (8), Srinnasaragai a Inengar . Muthusami Padayachi (1934) A I R 1934 Pat 64 (65) 150 Ind Cas 896, Barmath Mandar v. Ram
 - Adhan Ray, (1937) A I R 1937 Rang 180 (183) 171 Ind Cas 643, Bashir Ahmed v.
 - Maatschappig (1917) 30 Ind Cas 520 (521) (All), Bhagwandin v Shankar Prasad,
 - (1933) A I R 1933 Cal 4I4 (415) 60 Cal 404 144 Ind Cas 177, Nutbihara Das v Bishweshuari Debee
 - (1938) A I R 1938 Lah 440 (411), Jezha Ram v Poman Bhagat
 - (1926) A I R 1926 Oudh 393 (391, 395) 1 Luck 460 91 Ind Cas 1031, Hulas · Darkatunuissa Begam
 - (1919) 4 1 R 1919 Lah 156 (157) 51 Ind Cas 575, Mt Gulab Dett v Mongs (1928) A 1 R 1929 Oudh IS (19) 104 Ind Cas 760, Sukder v Prag Dutt.
 - (1922) A 1 R 1922 Lah 82 (83) 68 Ind Cas 263, Chandan v Bahadur.
 - (1931) A I R 1931 Lah 313 (314) 134 Ind Cas 493, Mahomed Ala v. Mahomed Ahan (Person cluming hen over property and milling to give up possession on payment of the charge is not in adverse posses-
- 5 (1938) A 1 R 1938 Mad 454 (455) 178 Ind Cas 301, Atchayya Patrudu v. Jalaluddın
- 6, (1933) A I R 1933 Cal 544 (546) 142 Ind Cas 582, Kals Ram v Dulal Ram, (1918) A I R 1918 Lah 208 (308) 46 Ind Cas 964, Alla Dad v Fazat Dad, (1901) 1001 Pun Re No 43, Bazkhan v Sultan Mallick
 - (1916) 4 1 R 1916 Oudh 296 (999) 19 Ordh Cas 1 34 Ind Cas 257, MI. Ganesha v. Nageshar Baksh Singh

Arts. 142 & 144 Note 16

adverse possession is possession which is wrongful, that the possession must be by a person holding the land on his own behalf or on behalf of some person other than the true owner, the true owner having a right to immediate possession, and that the possession of the wrongdoer must be exclusive. A contrary view namely that the possession of a person may be adverse to another even though he may admit the title of that other, has been held in the undermentioned case. It is submitted that this view cannot be accepted as correct.

It follows from the above that a possession on the part of A consistent and reconcilable with the title of B cannot be adverse to B ¹⁰ Where the owner is not prevented from using the property in the way in which it is intended to be used, there can be no adverse

- (1933) A I R 1933 Oudh 462 (462, 463) : 146 Ind Cas 987, Ramshankar v. Sheo Dutt
- (1930) A I R 1980 Lab 991 (992) 11 Lab 410 : 123 Ind Cas 278, Ghulom Murtara v. Nagma.

7. (1903) 27 Bom 408 (412) 5 Bom L R 269, Kondiba v. Nana.

- (1936) 163 Ind Cas 347 (349) (Cal), Sarafuddin Nur Ahamd v. Jabanessa Khatoon.
- 8. (1878) 4 Cal 327 (329). 2 Shome L R 106, Bejoy Chunder v. Kalı Prosanna. (Per Markby, J.)
 - (1878) 4 Gal 455 (468) · 3 Cal L R 355 : 2 Shome L R 153, Kherodemoney Dossee v Durgamoney Dossee.
 - (1921) A I R 1921 Born 38 (39) 45 Born 1001 : 61 Ind Cas 594, Vishnu Bhihaji v Babla Lacha.
 - (1903) 27 Bom 43 (51) 4 Bom L R 721, Taru Bas v Venkatrao
 - (1886) 9 Mad 244 (246) 10 Ind Jur 61, Madhava v. Narayana.
- (1939) A I R 1939 Bom 1 (17): 179 Ind Cas 178, Narayan Jeraji v. Gurunathagonda. 8a(1932) A I R 1932 Outh 46 (18): 7 Luck 250: 137 Ind Cas 678, Suraj Bali
- v. Mahadeo Prasad (1937) A I R 1937 Sind 78 (79): 157 Ind Cas 288, Mt. Sita Bas v. Jumo
 - (1910) A I R 1919 Cal 240 (241): 50 Ind Cas 45, Tarachand v. Secretary of State.
 (1933) A I R 1938 Mad 454 (455): 178 Ind Cas 301, Atchanna Patrudu v.
 - Jolaluddin.
 9. (1933) A I R 1933 Cal 414 (415) · 60 Cal 404 . 144 Ind Cas 177, Nuibihari
 Day Bissessears Debee.
- 10 Sec Note 2 ante.
 - (1943) 3 Hare 26 (33, 34): 61 R R 193, 67 E R 293, Lewis v. Thomas (Defendants claiming under the title of the plaintiff and thus acknowledging plaintiffs title cannot be in adverse possession.)
 - (1923) A I R 1923 All 399 (400) · 71 Ind Cas 265, Lakku v. Lal Singh.
 - (1926) A I R 1926 Oudh 193 (199): 91 Ind Cas 97, Abdullah Khan v. Amir Huder Khan
 - (1932) A.I.R. 1932 Ondh. 46 (48): 137 Ind Cas 678: 7 Luck 250, Suray Bali v Mahadeo Prasad. (Every occupier of a house is lable to pay water and house taxes. The prement of these by person pleading adverse possession is not irreconcilible with the plaintiff's ownership of property in a suit for possession.)
 - (1871) at Thakur.

 **rry of State v.

 duntry uglits of
 - (1938) A. J. R. 1938 Cal. 117 (119): 176 Ind Cas. 706, Berojullah Sarkar v. Apalullah, Mand. (Mero Laet that A. 13 allowed to be in joint possession with B of littler's property is not enough to show that A's possession is adverse to B.)

te adverse]]

possession, for there is in such a case no hostility to or denial of Arts, 142 & 144 the title of the true owner. Thus, where A claimed to have been in adverse possession of certain drains vested in a municipality. but it was found that the municipality was not in any way prevented by the acts of A from enjoying the drains as drains, it was held that A's acts did not constitute adverse possession.11 A mere squatter or intruder who does not deny the title of the true owner and does not set up any claim of right in himself cannot claim to be in adverso possession 12

In deciding whether the alleged acts of a person constitute adverse possession or not, regard must be had to the animus of the person doing those acts, and this must be ascertained from the facts and circumstances of each case.13

Where the acts alleged do not constitute effective possession at all of the interest claimed, they would obviously not constitute adverso nossession14 and the nosition will not be improved by the denial of the title of the owner, 15 especially when the owner has no knowledge of such assertion 16 A, a zamindar, made a mortgage of his property to C on 11th January 1865 Subsequently he granted a patni leaso thereof to B on the 6th of September 1865 On the 21st of February 1867 A's interest was brought to sale by the Sheriff of Calcutta and was knocked down to B, but the conveyance was executed in his favour on the 1st of April 1867 C, who had in the meanwhile nurchased the property in execution of a decree obtained by him on bis mortgage, sued B for thas possession of the property. It was held by the High Court of Calcutta that B's possession as painidar

^{11 (1020)} A I R 1020 Mad 103 (104) 55 Ind Cas 493, Arunachala Chettiar v. Municipal Council Mayararam

^{12 (1917) 89} Ind Cas 520 (521) (All), Bhaowan Din v Shankar Prasad (1904) 9 Cal W N 111 (115), Madhabi Sundari Dassya v Gaganendra Nath. See also footnotes (5a) to (9) to note 11 ante.

^{13 (1923)} A I R 1923 Mad 11 (12) TO Ind Cas 653, Rasambal Ammal v Shanmuoa Mudaliar

⁽¹⁹²⁰⁾ A I R 1926 Cal 568 (575, 576) . 91 Ind Cas 235, Ganga Prasad Chowdhry v Kuladananda Roy

^{(1897) 21} Mad 53 (55), Chockalings v Muthusamy (Where the defendant who was the brother of the plaintiff happened to be using as a backyard a few square yards of vacant house site land, to which plaintiff had title, it was held there was nothing under the circumstances sufficient to constitute adverse possession by the defendant as against the plaintiff, especially because the parties were brothers and the land in question was situate tetween their houses)

^{14. (1928)} A I R 1928 Cal 682 (884) 117 Ind Cas 693, Sourandranath Basu v. Nirmalchandra Banerjee

⁽¹⁹²⁹⁾ A I R 1929 Lah 625 (626) 114 Ind Cas 70, Amrit Sarya Ram v Din an Chand

⁽¹⁹¹⁶⁾ A I R 1916 All 79 (81) . 38 All 411 34 Ind Cas 171, Kunwar Sen v. Darbars Lal [See also (1867) 2 Agra 6 (9), Ramaisher Singh v. Sair azalim Singh.] 15 (1900) 24 Bom 435 (443) 2 Bom L R 261, Soorannana Desappa v. Secretary

^{(1912) 18} Ind Cas 407 (468) (Mad), Veeranna v Chellammayya.

^{16. (1912) 13} Ind Cas 467 (468) (Mad), Veeranna v. Chellammayya.

Arts, 142 & 144 could not be considered adverso to C who had a superior interest that B's possession as purchaser could not be deemed to have commenced till the 1st of April 1867 and that the suit brought within twelve years thereof was within time.17

> Knowledge on the part of the person claiming title by adverse possession that he had no title will not make his possession other than adverse. In Bharrao v. Rakhmin. 18 Sir Charles Farran, C. J., observed that "a person coming in under a title which he knows to be defective, or even a trespasser is not, by reason of his knowledge, deprived of the law of limitation." Nor, on the other hand, will the mere consent of the true owner affect the question, whether the possessor holds his possession in contravention of the right of the owner. In Dwarlanath Chowdhury v. Shasti Kinkar Banerji,19 Sir Lawrence Jenkins, C J, observed as follows:

"The mere fact of consent does not prevent possession being adverse. The test is whether the person who sets up adverse possession is able to show that he held for himself, and if he did so, the mere fact that there was acquiescence on the part of the other persons concerned, can, in circumstances like the present, make no difference."

The mere fact that the possession of A is hostile to and in denial of the title of B. is however not sufficient to confer on A a title by adverse possession. In Radhamoni Debi v The Collector of Khulna, 20 it was laid down by their Lordships of the Privy Council that in order to constitute adverse possession.

"the possession required must be adequate in continuity, in publicity and in extent to show that it is adverse to the competitor."

And this view has been re-affirmed in numerous cases.21

^{17. (1882) 8} Cal 79 (84) : 9 Cal L R 173. 10 Cal L R 113. Kasumunnissa Bibi v. Nalraina Bose.

^{18. (1898) 23} Bom 137 (140) (F B).

^{19. (1913) 18} Ind Cas 869 (874) (Cal).

^{20. (1900) 27} Ind App 136 (140) , 27 Cal 943 · 4 Cal W N 597 ; 2 Bom L R 592 ; 7 Sar 714 (P C), Radhamon: Debt v. Collector of Khulna.

 ⁽¹⁹³⁴⁾ A I R 1934 P O 77 (61): 147 Ind Cas 887 · 61 Ind App 50: 56 All 111,
 (P C), Mt Allahrakhi v. Shah Mohammed Abdur Rahim. (1934) A I R 1934 P O 23 (25): 147 Ind Cas 545 · G1 Ind App 78 : 61 Cal

^{262 (}P C), Secretary of State v. Debendra Lal Khan

٧.

The principle is derived from the classical requirement that in order to give a title by adverse possession, the possession must be nee to five claim nee precario, that is, peaceful, open and continuous 22

(1934) A I R 1934 Cal 187 (192): 151 Ind Cas 1076, Secretary of State v. Dhirendra Nath Roy

(1903) 31 Cal 397 (191), Well, Ahmed Choudhry v. Tota Meah Chowdhry (1910) 6 Ind Cas 392 (396) (Cal), Nawab Bahadur of Murshidabad v. Gopinath Mandal

(1921) A I R 1921 Cal 577 (580): 67 Ind Cas 170, Jogendranath v Jagadendra Nath

(1938) A I R 1938 Sind 198 (202) . 178 Ind Cas 690, Arab Janglu v. Panjal Shah.

(1907) 35 Cal 961 (971); 12 Cal W N 127 . 6 Cal L Jour 735, Jogendranath v. Baldeo Das.

(1910) 6 Ind Cus 359 (361) (Cal), Baroda Prasad v. Annoda Mohan.
(1927) A I R 1927 Out 551 (551) 102 Ind Cas 207, Imdad Hussam Khan

v. Mt. Hydari Khanam. (1919) A I R 1919 Cal 240 (241) · 50 Ind Cas 45, Tarachand Roy v Secretary of State

(1911) 10 Ind Cas 742 (743) (All), Zahuran v. Rahim.

(1921) A I R 1921 Stod 177 (190) 16 Stnd L R 25 80 Ind Cas 118, Mt. Bhagthar, v Mt Khalun.

(1930) A I R 1930 Oudh 46 (18) 5 Luck 410 121 Ind Cas 84, Mahabir Singh v Chitta Singh.

(1921) A I R 1921 Cal 277 (282) 66 Ind Cas 923, Maharajah of Cooch Behar v Mahendra Ranjan Roy.

(1921) A I R 1921 Cal 687 (695) 65 Ind Cas 866, Secretary of State v. Wazed Ali.

(1902) 26 Bom 410 (416, 417). 4 Bom L R 28, Vithaldas v. Secretary of State.

 (1901) 25 Bom 3c2 (3c6) 3 Bom L R 47, Jagjitan Das v. Bas Amba.
 (1920) A I R 1920 Cal 202 (204). 56 Ind Cas 811, Manuella Kolu v. Prasanna Kumar Sarhar.

(1913) 18 Ind Cas 869 (870) (Cal), Duarkanath Choudhry v. Sasti Einkar Bancries (1925) A I R 1925 Cal 1253 (1255) 86 Ind Cas 767. Besov Chand Mahatab

v Sarathumar Roy (1925) A I R 1925 Cai 981 (983) 85 Ind Cas 594, Abhoy Shankar Mazumdar v Satyendra Frasanna Bose.

(1925) A I R 1925 Cal 316 (318) . 82 Ind Cas 318, Hartsadhan Patari v. Dinanath Banerjee

(1934) A I R 1934 Pat 485 (489) 154 Ind Cas 1032, Tharachhna Kuart v. Ramyad Kuar.

(1928) A I R 1928 Bom 287 (288) IIO Ind Cas 303, Keshav Raghunath v. Govind Chunnaji (1935) A I R 1935 Cai 760 (761) 159 Ind Cas 752, Bhabans Prosanna v.

(1935) A 1 R 1935 Cal 760 (761) 139 Ind G23 752, Baabans Prosanna Manindra Chandra

Subadar.

(1918) A 1 R 1918 Nag 171 (173) 47 Ind Cas 892, Prahlad Singh v. Abdul Aziz Khan

(1917) A I R 1917 Cal 469 (479) 36 Ind Cas 890, Ramchandra Sil v. Raman Mani Dasi (1935) 163 Ind Cas 897 (903) 62 Cal L Jour 177 (188) 63 Cal 300, Suren-

dra Kumar Foy v Ahmad Nauab Choudhry. (1923) A I R 1923 Cat 82 (85): 77 Ind Cas 564. Jobeda Khalun v Tulsi-

charan Dos. 22. (1934) A I R 1934 P C 23 (23) 147 Ind Cas 545 61 Ind App 78 . 61 Cal 262 (P C), Sceretary of State v. Delendratal Rham.

Arts. 142 & 144 could not be considered adverse to C who had a superior interest that B's possession as purchaser could not be deemed to have commenced till the 1st of April 1867 and that the suit brought within twelve years thereof was within time.17

> Knowledge on the part of the person claiming title by adverse possession that he had no title will not make his possession other than adverse. In Bharrao v. Rakhmin, 18 Sir Charles Farran, C. J., observed that "a person coming in under a title which he knows to be defective, or even a trespasser is not, by reason of his knowledge, deprived of the law of limitation." Nor, on the other hand, will the mere consent of the true owner affect the question, whether the possessor holds his possession in contravention of the right of the owner. In Dwarlanath Chowdhury v. Shasti Kinkar Banerji,19 Sir Lawrence Jenkins, C. J. observed as follows:

"The mere fact of consont does not prevent possession being adverse. The test is whether the person who sets up adverse possession is able to show that he held for himself, and if he did so, the mere fact that there was acquiescence on the part of the other persons concerned, can, in circumstances like the present, make no difference."

The mere fact that the possession of A is hostile to and in denial of the title of B, is however not sufficient to confer on A a title by adverse possession. In Radhamoni Debi v. The Collector of Khulna,20 it was laid down by their Lordships of the Privy Council that in order to constitute adverse possession.

"the possession required must be adequate in continuity, in nublicity and in extent to show that it is adverse to the competitor."

And this view has been re-affirmed in numerous cases.21

17. (1882) 8 Cal 79 (84) . 9 Cal L R 173. 10 Cal L R 113, Kasumunnissa Bibi v. Nilraina Bose.

18 (1898) 23 Bom 137 (140) (F B).

19. (1913) 18 Ind Cas 869 (874) (Cal).

20. (1900) 27 Ind App 136 (140) : 27 Cal 943 : 4 Cal W N 597 · 2 Bom L R 592 : 7 Sar 714 (P C), Radhamons Debs v. Collector of Ehulna.

21. (1934) A I R 1934 P C 77 (81): 147 Ind Cas 887: 61 Ind App 50: 56 All 111,

(P C), Mt. Allahrakhi v. Shah Mohammed Abdur Bahim.

(1934) A I R 1934 P C 23 (25): 147 Ind Oas 545 · 61 Ind App 78 : 61 Cal 202 (P C), Secretary of State v. Debendra Lat Khan. T. R

App

Ind App 130, Followed)

(1937) A I R 1937 AH 429 (431) . 169 Ind Cas 962, Ram Chandra v. Asa Ram. (To acquire title by adverse possession, it must be open, exclusive and continuous for twelve years)

(1927) A I R 1927 Oudh 141 (142) 29 Oudh Cas 895 : 98 Ind Cas 704 : 1

Luck 111, Parjor Singh v. Sidh Nath.

The principle is derived from the classical requirement that in Arts, 142 & 144 Note 16 order to give a title by adverse possession, the possession must be nec vi nec clam nec precarso, that is, peaceful, open and continuous.22

- (1934) A I R 1934 Cal 187 (192): 151 Ind Cas 1076, Secretary of State v. Dhirendra Nath Roy
- (1903) 31 Cal 397 (404), Wals Ahmed Choudhry v. Tola Meah Choudhry. (1910) 6 Ind Cas 392 (396) (Cal), Nanab Bahadur of Murshidabad v. Gopinath Mandal
- (1921) A J R 1921 Cal 577 (580) 67 Ind Cas 170, Josendranath v. Janadendra Nath.
- (1938) A I R 1938 Sind 198 (202) . 178 Ind Cas 690, Arab Janglu v. Panial (1907) 35 Cal 961 (971); 12 Cal W N 127 . 6 Cal L Jone 735, Jogendranath
- v. Baldeo Das (1910) 6 Ind Cas 359 (361) (Cal), Baroda Prasad v Annoda Mohan
- (1927) A I R 1927 Queh 551 (551) . 102 Ind Cas 207, Imdad Hussam Khan v. Mt. Hydars Khanam.
- (1919) A I R 1919 Cal 240 (241) . 50 Ind Cas 45. Tarachand Ron v. Secretary of State
- (1911) 10 Ind Cas 742 (743) (All), Zahuran v. Rahım.
- (1921) A I R 1921 Sind 177 (180) . 16 Sind L R 25 . 80 Ind Cas 118, Mt,
- Bhagbhars v Mt Khatun. (1930) A I R 1930 Oudh 46 (48) 5 Luck 410: 121 Ind Cas 81, Mahabir
- Singh . Chitta Singh (I921) A I R 1921 Cal 277 (282) 66 Ind Cas 923, Maharajah of Cooch
- Behar v Mahendra Ranjan Roy. (1921) A I R 1921 Cal 697 (695), 65 Ind Cas 866, Secretary of State v. Wazed Alı.
- (1902) 26 Bom 410 (416, 417) . 4 Bom L R 28, Vethaldas v. Secretary of State
- (1901) 25 Bom 362 (966) 8 Bom L R 47, Jagnean Das v. Bas Amba. (1920) A I R 1920 Cal 202 (201) 56 Ind Cas 811, Manulla Kolu v Prasanna
- Kumar Sarkar. (1913) 18 Ind Cas 869 (870) (Cal), Duarkanath Choudhry v. Sasts Einhar
- Banerjee
- (1925) A I R 1925 Cal 1253 (1255) 86 Ind Cas 767, Bejoy Chand Mahatab 3. Sarathumar Roy (1925) A I R 1925 Cal 981 (993) 85 Ind Cas 594, Abboy Shankar Mazumdar
- v Satyendra Prasanna Bose. (1925) A I R 1925 Cal 316 (318) 82 Ind Cas 318, Harsadhan Patars v.
- Dinanath Banerjee.
- (1934) A I R 1934 Pat 485 (489) . 154 Ind Cas 1032, Tharschina Eugra v. Ramyad Kuar
- (1928) A I R 1928 Bom 287 (288) 110 Ind Cas 303, Keshav Raghunath v. Gound Chimnan
- (1935) A I R 1935 Cal 760 (761) 159 Ind Cas 752, Bhabani Prosanna v. Manindra Chandra
- (1906) 3 Cal L Jour 316 (331), Ananda Hars Basack v. Secretary of State. (1912) 11 Ind Cas 609 (623) (Cal), Secretary of State v. Kalika Prasad.
- (1932) A I R 1932 Oudh 140 (142) 136 Ind Cas 700, Sillabakhsh Singh v. Subadar (1918) A I R 1918 Nag 171 (173) 47 Ind Cas 892, Prahlad Singh v. Abdul
- Azız Khan (1917) A I R 1917 Cal 469 (479). 36 Ind Cas 890, Ramchandra Sil v. Raman
- Mans Dass (1935) 163 Ind Cas 897 (903) 62 Cal L Jour 177 (188) · 63 Cal 300, Suren. dra Kumar Roy v. Ahmad Nanab Choudhry.
- (1923) A I R 1923 Cal 82 (85) 77 Ind Cas 564, Jobeda Khatun v. Tulsicharan Das.
- 22. (1934) A I R 1934 P C 23 (25) 147 Ind Cas 545 61 Ind App 78 : 61 Cal 262 (P C), Secretary of State v Debendralal Khan.

Arts. 142 & 144 Notes 16-18

If the elements stated above, namely, (a) that the possession of the wrongdoer must be in demal of the title of the true owner and (b) that it must be adequate in continuity, in publicity and in extent, exist, the possession must be regarded as adverse. It is not necessary that the owner should be shown to have protested that his rights were being violated and that the possession went on adversely to his protests.²³

- 17. "Defendant." The word "defendant" has been defined in Section 2 sub-section 4 ante as including any person from or through whom a defendant derives his liability to be sued. See Notes to that sub-section ante.
- 18. Possession is not adverse if it can be referred to a lawful title.—Where the possession may be lawful or unlawful it must be assumed, in the absence of evidence, that the possession is lawful. It is also a fundamental principle that where a possession can be referred to a lawful title, it will not be considered to be adverse.
 - (1919) A I R 1919 P C 62 (69): 43 Mad 253; 46 Ind App 204: 53 Ind Cas 298 (P C), Arunachalam v Venkitachalavathu.
 - (1935) A I R 1935 P C 36 (39) · 153 Ind Cas 929 : 14 Pat 327 . 62 Ind App 40 (P C), Syschandra Nandy v. Basmath Jugul Esshere.
 - (1919) A I R 1919 Cal 126 (127): 50 Ind Cas 649, Panchu Muchs v. Bhuto
 - (1935) 164 Ind Cas 61 (63): 62 Cal 921, Upendranath Roy v. Jstendranath Kundu.
 - Kundu. (1938) A I R 1938 Lab 6 (8) : 170 Ind Cas 991, Mt. Shanti Devs v. Mani Singh.
- 23. (1019) A I R 1919 P C 62 (68) · 43 Mad 253 . 48 Ind App 204 . 53 Ind Cas 288 (P C), Arunachalam v. Venkitachalapathy

Note 17

- (1933) A I R 1933 Nag 274 (277): 30 Nag L R 18: 150 Ind Cas 079, Mt. Japan v. Zabu.
 - (1910) 8 Înd Cas 1095 (1095): 33 Ali 224, Ram Lakhan Rai v. Gajadhar Rai.
 (1910) 6 Înd Cas 467 (471) (Cal), Khiroda Kanta Ray v. Krishna Das Laha.
 - (1910) 6 Ind Cas 467 (471) (Cal), Rhiroda Kanta Roy v. Krishna Das Laha, (1921) A I R 1921 Bom 48 (48): 45 Bom 570: 50 Ind Cas 805, Ramchandra Balwant v. Balaji Gantsh,

Note 18

- (1918) A I R 1918 P C 1 (2) . 1918 Pun Ro No. 64 : 47 Ind Cas 626 (P C), Hardit Singh v. Gurmukh Singh.
 - (1936) A I R 1936 Iah 673 (674): 160 lud Cas 1933, Mohammad Yahub v. Abdul Karım.
 - (1923) A I R 1923 All 418 (419): 71 Ind Css 1033, Jharap Rai v. Jamt Rai.

 ai v. Sham Bahadur.

 v. Adoo Shaubh.
 - : 78 Ind Cas 895, Indar-
 - (1900) 2 Bom L R 410 (111), Basapa v. Basapa.
 - (1865) 3 Suth W R 12 (12), Biressur Banerjee v. Oncoda Churn Banerjee.
 - (1930) 125 Ind Cas 789 (739) (Cal), Kuda Koch v. Madan Gopal Agarwalla.
 (1869) 12 Suth W R 217 (218) 3 Beng L R A C 312, Selam Sheikh v. Baidonath Ghatak.
 - (1921) A I R 1921 Cal 647 (652): 67 Ind Cas 81, Jagannath v. Chandi Bibi.
 (1912) 16 Ind Cas 27 (29) (Mad), Rayllu Patter v. Annahutti Mannadar.
- 2. (1914) A I R 1914 P C 213 (215, 216) (P C), Corea v. Appuhamy.

The reason is that a person whose possession can be referred to a Arts. 142 & 14

lawful title will not be permitted to show that his possession was hostile to another title. The leading case on the point is Thomas v. Thomas, decided by the Court of Chancery in the year 1855 In that case X was entitled under the marriage settlement of his father and mother to certain real estates upon the death of his mother, to whom a life estate had been given therein. The mother died in 1832. X attained majority in 1836. The father remained in possession of the settled estate till his death in 1852. The auestion was whether the father's possession was adverse to X or whether it must be deemed to have been as guardian of X. Wood, V. C., observed as follows: "But there is another principlo which affects this case,

namely that possession is never considered adverse if it can be referred to a lawful title. An important authority on this point is Doe d. Milner v. Brightwen, where a party who had taken possession of copyholds on the death of his wife, by an adverse title, lived more than twenty years afterwards and it was then found that there was an old custom of the manor by which he had a night to curtesy, and therefore his possession was referred

- (1927) A I R 1927 Nag 104 (106) 22 Nag L R 175 100 Ind Cas 446. Mt. Deshrans v. Kishore Singh.
- (1930) A I R 1930 Nag 300 (303) 27 Nag L R 152: 127 Ind Cas 889. Jairam v. Bhilagi.
- (1891) 1891 Bom P J 232, Sheshs kom Ramaya v Venhatramna.
- (1936) A I R 1936 Cal 106 (109) 161 Ind Cas 450, Narmal Chandra v. Mohitosh Das.
- (1928) A I R 1928 Oudh 449 (460) 112 Ind Cas 522, Mohammad Jamil v. Mohammad Hafiz
- (1936) A I R 1936 Pat 186 (140) 161 Ind Cas 831, Mt. Bib Zamab v. Muhammad Ayub
- (1923) A I R 1923 All 418 (419) 71 Ind Cas 1033, Jharap Ras v Jami Ras.
- (1902) 4 Born L R 964, Yesu v Fulchand
- (1924) A I R 1924 Oudh 206 (270, 271) 27 Oudh Cas 77 78 Ind Cas 895, Indarpal Singh v. Thakur Din Singh.
- (1918) A I R 1918 Cal 532 (533, 534) . 42 Ind Cas 884, Gnanendra Nath v. Mohendra Mohini Debya
- (1927) A I R 1927 All 554 (555) 101 Ind Cas 621, Ram Bharos Pands v. Dhurjati Upadhiya
- (1930) A I R 1930 All 109 (110) 121 Ind Cas 701 : 52 All 229, Dhurjati Upadhiya v. Ram Bharos Pande
- (1912) 16 Ind Cas 27 (28) (Mad), Bayılu Patter v Annakuttı Mannadıar
- (1916) A I R 1916 Cal 59 (59) 35 Ind Cas 26, Bisheshuar Gangooly v. Bhagabats Charan
- (1915) A I R 1915 Mad 121 (122) 26 Ind Cas 316, Punnusuamy Iver v. Permoye MARKE A T TI 1000 AT 991 (000) 110 T-2 C-- EDG -----

the man and not adversely)

- (1867) 2 Agra 78 (78), Naram Sahai v. Posco]
- 3 (1855) 110 R R 107 (110) 4 W R (Eng) 135 · 2 Kay & J 79 25 L J Ch 159; 1 Jur (N S) 1160.
- 4 (1809) 10 East 583 (594) 10 R R 395 103 E R 897.

Arts, 142 & 144 Notes 18-19 to that title which was consistent with the title of the other party.

"In this case a father, who had several children entitled to estates on the death of his wife, all the children being under age at that time, entered upon the estates I think I must reasonably infer that the entry was an ontry on their behalf and as their guardian, and was totally different from the case of a mere stranger entering upon the property under similar circumstances.

"Then it is said that, though the entry might have been lawful in its meeption, the retention of the property after the children attauned twenty-one harred their rights under the statute of limitation; but I think the better and sounder view here is that, if this gentleman entered as guardian, this Court would never allow him to set up any other title to the estate."

In Bejoy Chunder Banerjee v. Kally Prosonno Mookerjee, Markby, J., observed:

"One who holds possession on behalf of another does not, by a mere denial of that other's title, make his possession adverse so as to give himself the benefit of the statute of limitation."

In Corea v. Appuhamy, their Lordships of the Privy Council observed, following Thomas v. Thomas?:

"Entering into possession, and having a lawful title to enter, he could not direct himself of that title by pretending that he had no title at all."

See also the undermentioned case.8

1 Jur (N S) 1160.

19. Possession by Hindu female.—The possession by a femalo heiress under Hindu Law, of property inherited by her is not adverse to the reversioners who are entitled to the property after death. The reason is twofold: first, that in such ease the possession must be referred to her title as heiress, in which capacity

5. (1878) 4 Cal 327 (329) : 2 Shome L R 106.

6. (1914) A T R 1914 P G 243 (245): 1913 A C 230: 61 L J P C 151 (P C). 7. (1855) 110 R R 107 (110): 4 W R (Eng) 135: 2 Kay & J 79: 25 L J Ch 159:

(1914) A I R 1914 Mad 293 (239): 22 Ind Cas 271, Official Assigneev. Moorls
 Doss. (A man possessing himself of property in one character, cannot
 himself siler that character and begin to possess it in another character.)

Note 19

Jaggannath Prasad

6:

(1929) A I R 1929 Oudh 215 (219): 115 Ind Cas 279, Chandra Shekhar

she would only take a life-estate contemplated by Hindu Law, and Arts, 142 & 144 secondly, that the reversioners not being entitled to the possession of the property till the death of the heiress, time will not, as will be seen in Notes 79 and 83 an fra, run against them. A was entitled to a certain house but could get possession thereof only on the death of B, his mother, who had a right of residence therein. The house was sold in execution of a decree obtained against her son A and was purchased by one X. During the hietime of B, C was living in the house. When X sucd for possession on the mother's death. C resisted the suit on the ground that he had been in adverse posses. sion for more than twelve years though within twelve years of B's death. It was held by the Privy Council that C's nossession was not adverse to X till B's death 2 In Ram Anugra Narain Singh v. Choudhry Hanuman Sahar,3 where a Hindu widow took possession of her son's estate on his death, and she was his heiress, and remained in possession till her death, it was held by their Lordships of the Privy Council that the possession of the widow must be referred to her title as heiress of her son and that no case of adverse possession had been established.

Where a Hindu female who has no right to be in possession of the property gets into possession thereof, her possession will be adverse to those entitled to the property and she will piescribe for an absolute title to the property, unless it is shown that she was in possession under some arrangement with the owners or that she was prescribing only for a limited interest 32 Thus, where the widow of a congregner in a Hindu tout family was in possession of the family property in assertion of absolute ownership, it was held that ber

(1878) 1878 Bom P J 237, Nilhanth v Shuram. (Possession of lessee of widow not adverse during lifetime of widow)

2 (1926) A I R 1926 P C 96 (97) 53 Ind App 201 53 Cal 948 97 Ind Cas 761 (PC), Annada Prasad Das v Ambika Prasad Das

3 (1902) SO Cal 303 (308) SO Ind App 41 7 Cal W N 225 . 5 Bom L R 6 8 Sat 409 (P C), Ram Anugra Naram Sungh v Hanuman Saha, 81 (1929) A I R 1928 All 45 (46) . 49 All 713. 102 Ind Cas 175, Rikhdeo Tenars

v Sukhdeo Tewari (1934) A I R 1934 Lah 270 (270) . 150 Ind Cas 108, Mukh Ram v. Mt.

(1925) A I R 1925 Mad 1066 (1067) . 86 Ind Cas 296, Schhara Rao v Ramatanu Seshanya (1914) A I R 1914 Mad 428 (429) 23 Ind Cas 594, Muttanna v Kodanda-

ramayya (1914) A I R 1914 Mad 668 (668) 24 Ind Cas 880, Vengudusuamy Iyer v. Narayanasuamy Iyer

(1899) 9 Mad L Jour 33 (34), Bapanayya v Peddichalamatya.

(1934) A I R 1934 Lah 633 (636) 152 Ind Cas 773, Khem Chand v. Erishna Kumar

(1926) A I R 1926 Oudh 126 (197) 90 Ind Cas 825, Drightyoy Singh v. Drugpal Sungh.

(1925) A I R 1925 Oudh 669 (670) 87 Ind Cas 164, Lat Bahadur Singh v. Mathura Singh

(1928) A I R 1928 Oudh 481 (482) . 113 Ind Cas 258, Mt. Ram Dulars v. Sher Bahadur Singh

(1929) A I R 1929 Oudh 215 (221) 115 Ind Cas 279, Chandra Shehar Singh v Jagjiwan Balsh Singh.

Note 19

Arts. 142 & 144 Note 19

possession was adverse to the other members of the joint family and that she would acquire an absolute title to the property after twelve years of such possession.4 Similarly, where a Hindu female who is only entitled to maintenance and not to possession, obtains possession. such possession will be adverse to those entitled to possession so as to enable her to prescribe for an absolute title5 unless they could show that the possession was the result of some arrangement between them 6

The case would be different where a Hindu female enters into possession as an heiress under Hindu Law but subsequently she becomes disentitled to retain possession. Thus, where a Hindu widow

There is no presumption that the possession is that of a qualified owner;

(1911) 10 Ind Cas 63 (64) (Mad), Euppuswamy v. Srinivasaiengar.

(1936) A I R 1936 Oudh 340 (364, 368) . 163 Ind Cas 770, Mata Ballish Singh v. Ajodhiya Ballish Singh.

'oolappa Nash. v. Raj Baha-

dur Kurms.

[See also (1920) A I R 1920 Nag 196 (198) : 16 Nag L R 221 : 56 Ind Gas 952, Kasturs v. Lote Major. (Hindu mistress entitled to maintenance but not to possession - Her possession is adverse to rightful owner.)

(1897) 21 Bom 110 (117), Desar Ranchhoddas v. Rawal Nathu Bhai. (1931) A I R 1931 Pat 114 (124): 121 Ind Cas 337, Chattra Kumari Devi v. Mohan Bikram Shah.

(1911) 9 Ind Cas 50 (51) 33 All 312, Gajadhar Pande v. Mt. Parbati.] 4. (1919) A I R 1919 P C co (62) : 42 All 152 : 46 1nd App 197 : 55 Ind Cas 436 (P C), Satgur Prasad v. Raj Kishore Lal.

(1878) 2 Mad 23 (29) 5 Ind App 206: 3 Cal L R 205: 2 Ind Jur 616: 2 Shome L R 128: 3 Sar 850 (P C), Zamindar of Pittapuram v. Proprietors of Mutta of Kolanka.

(1894) 22 Cal 445 (450): 22 Ind App 25 · 5 Mad L Jour 1: 6 Sur 523: R & J 136 (P C), Lachhan Kunwar v. Manorath Ram

(1874) 1874 Bom P J 24 Rajee v. Rambhajee. (1924) A I R 1924 AH 39 (91): 45 AH 729: 74 Ind Cas 869, Uman Shankar

v. Mt. Assha Khatun. (1924) A 1 R 1924 All 740 (742) : 83 Ind Cas 751 : 46 All 769, Kalt Charan v. Mt. Peare.

5. (1888) 1888 All W N 133 (134), Sewa Ram v. Lachman Prasad.

(1887) 1887 All W N 43 (43), Narain Das v. Banshidhar,

(1899) 1899 All W N 95 (95), Kouldhars v. Raghubir,

(1927) A I R 1927 Oudh 133 (140) : 99 Ind Cas 890, Rajabahadur Singh v. Kanhaiya Bakhsh Singh.

(1925) A I R 1925 Oudh 729 (731) : 87 Ind Cas 1031, Bhagwan Din v. Ajudhia.

6. (1902) 29 Cal 664 (671, 673) : 29 Ind App 132 : 6 Cal W N 657 : 4 Bom L R 547 8 8 tr 250 (P C), Sham Koer v. Dah Koer (The reference in the judgment to the other co parceners as "reversionary heirs" is an obvious mistake

(1925) A 1 R 1925 Oudh 729 (730) : 67 1nd Cas 1021, Bhagwan Din v. Ajudhia.

ick 519, Mt.

Sant Balsh

[See (1869) 12 Suth W R 154 (159) : 3 Peng L R A C 259, Indubansi Kunwar v. Mt. Gribbirun Kunwar.

entered into possession as heiress of her husband, but by leason of Arts. 142 & 144 the birth of a posthumous son her possession became adverse to the son, it was held by their Lordships of the Privy Council that the adverse ressession must be considered as relating only to a widow's estate under Hindu Law. Similarly, where a Hindu widow in possession of her deceased husband's property, forfeits her rights to the property on re-marriages or by conversion to another faith hut continues in possession, her possession would be adverse to the reversioners only in respect of a limited estate in the property which she had prior to the forfeiture or the re-marriage, Likewise, where a Hindu daughter enters into possession of her father's property under a will giving her only a limited estate and it turns out that the will is invalid, it has been held that she will acquire only a limited estate by adverse possession, 10 Again, where the acquisition of full ownership is prohibited by law as in the case of waten property in Bombay, a Hindu widow in possession can acquire by prescription only a limited estate therein 11

It has been held in some cases 12 that the presumption, where a Hindu female without title enters into possession of property, is that her possession is adverse only to the extent of a limited interest in the property. It is submitted that this view is not correct

(1804) 8 C P L R 99 (100), Gunesh Paudit v. Imrattal Lodhs. (1878) 2 Mad 23 (29), 5 Ind App 206 3 Cal L R 265. 2 Ind Jur 616: 2 Shome L R 128 3 Sar 850 (PC), Zamunder of Petta-puram v. Proprietors of Mutta of Kolauka (Where such arrangement is proved, a suit within 12 years of her death is not barred]]

7. (1921) A I R 1924 P C 121 (122) 5 Lah 192 51 Ind App 171 . 80 Ind Cas 788 (PC), Mt. Laguants v Safa Chand

[See also (1939) A I R 1939 Oudh 17 (28) 178 Ind Cas 950, Jadunath Singh . Bitheshar Singh] 8. (1935) A I R 1935 Lah 537 (538) 157 Ind Cas 1006, Kishen Singh v. Mt

Partani (1927) A I R 1927 All 274 (276) 99 Ind Cas 578, Tarif v Phool Singh (1925) A I R 1925 All 369 (370) 86 Ind Cas 445, Umrao Singh v. Pirthi

(1929) A I R 1929 Lah 827 (328) 119 Ind Cas 238, Desa v. Dans. (1927) A I R 1927 All 523 (521) 49 All 203 100 Ind Cas 731, Mangat v.

(1933) A I R 1933 Lah 218 (219) 141 Ind Cas 399, Hasse v Ibrahim. 9 (1933) A I R 1933 Oudh 92 (93) 7 Luck 320 141 Jud Cas 831. Mt Farbats

v. Ram Prasad 10. (1937) A I R 1937 All 197 (204) 168 Ind Cas 541, Suraj Pravad . Gulab

(1908) 31 Mad 321 (327) 18 Mad L Jour 409 4 Mad L Tim 5, Narsimha Appa Rao v Jagganadha Gopala Rou (See (1925) A 1 R 1925 Mad 497 (509) 48 Mad 1 93 Ind Cas 705, Maharaja of Kolhapur & Sundaram Ayyar]

11. (1928) A J R 1928 Bom 333 (335) 114 Ind Cas 390, Arna v Gorra (1900) 27 Ind App 86 (91) 24 Eom 556 4 Cal W N 517 2 Bom L R 549 7 Str 710 (P C), Padapa v Suamirao

12 (1925) A I R 1925 All 330 (330) 85 Ind Cis 449, Bindrabau v Ram Narain [See also (1912) 15 Ind Cas 403 (404) (Wid), In re Prattipati

(1929) A I R 1929 Bom 383 (334) 119 Ind C to 7-to, Inant Da tatraja v Mahadio Wasudco 1

Arts, 142 & 144 Notes 19-20

Where a widow enters into possession of property without a right to do so, the case is one of dispossession and a suit for possession against her or her alience is consequently governed by Article 142.13

20. Possession under a temporary arrangement between members of a family .- . . . une of the heirs of a deceased Muhammedan, sped the other heirs for recovery of the share of the property left by the deceased propositus. Pending the litigation the question with regard to the relinquishment of the share of A, in her favour, was agreed, by all the heirs, to be referred to arbitration. No reference was, however, actually made, but for several years subsequent to the agreement, a certain fixed sum out of the profits of the estate continued to be paid to A. It was held by the Privy Council that the agreement was merely a provisional one, that no title was thereby conferred on A with regard to the alleged share in the estate, and that the subsequent payments could not make out a case for A of adverse possession, as the possession must be referred to such title as A had and not to any higher title.1

Where B was in possession under an agreement to surrender the land to A, it was held that his possession at the time of the surrender was not adverse to A, but that it became adverse when B refused to surrender the land as agreed upon. Where A transferred property collusirely in the name of B, in order to save the property from A's creditors, it was held in the undermentioned cases that as the transfer was a sham one intended to save the property from creditors, B's estensible possession must be deemed to have been

19. (1875) 7 N W P H C R 349 (351), Gebardhan v. Balmukand. (1923) A I R 1923 An 25 (26) : 45 All I : 75 Ind Cas 14, Mt. Radha Dulawa

v. Rashal Lal. (1937) A I R 1937 All 268 (270): 169 Ind Cas 586 : I L R (1937) All 424, Rashil Lai v. Mt Radka Dulanya.

(1928) A I R 1928 Lab 695 (696) : 109 Ind Cas 54, Halam Singh v. Hasara

Singh. (1935) A I R 1935 Rom 427 (431) : I59 Ind Cas 697, Shankar Vinaval v. Ramrao Sahebrao.

(1926) A I R 1926 Nag 129 (133) : 89 Ind Cas 663, Feshwant v. Daulat. (A

(1978) A I R 1928 Mad 820 (922) : 110 Ind Cas 613 : 51 Mad 815, Muthuswams v. Pennayya. (Widow having claim for residence and maintenance continuing in posession after death of last male holder but not as heir—Her possession is not wrongful at least till reversioners demand

(1907) 1907 Pun Re No. 102 : 1907 Pun W R No. 78, Dura Mal v. Naram Das.

(1932) A I R 1932 All 961 (361, 362) : 51 All 472 : 138 Ind Cas 363, Mt. Ram Kunwar v. Amar Nath

Note 20

1. (1225) A I R 1925 P C 70 (74) SS Ind C 15 149 (P C), Karemunnessa Khatun v Md. Farlul Karım.

2 (1876) 25 Suth W R 521 (523), Betts v. Mahomed Ismail Chowdhry.

3. (1919) A 1 R 1919 Oadh 420 (421). 22 Outh Cas 222- 53 Ind Cas 961, Ashfar Hustin v. Nazir Hustin.

with the object of maintaining that design and was not therefore Arts, 142 & 14 adverse to A. Sec also the undermentioned cases.4

Notes 20-21

21. Possession in lieu of dower. - Where a Mahomedan widow obtains possession of her husband's estate peaceably and without force or fraud, she is entitled to retain possession of it till her dower debt is naid. The right is, however, not the same as that of a mortgages to possession which is founded on contract. The possession in lieu of dower is not adverse to the heir, who can on payment of the dower, get back the property. When the heirs of a deceased Mahomedan sued his widow for immediate possession and the suit was decreed on condition that the plaintiffs were to pay the widow a certain amount as being the balance of the dower debt within a certain time, and on failure to pay it the suit was dismissed, and the widow their ennon sold the property to a third person, it was held by their Lordships of the Privy Council that the non-payment had not the effect of conferring an absolute estate on the widow and that the decision in the previous suit did not extinguish the plaintiff's right to claim possession at any future time.1 See also the undermentioned cases, 18

It is not necessary for possession to he peaceable and without force or fraud that it should have been nhtained by the widow with the consent of the husband's heirs. In Bebee Bachun v. Sheikh Hamid Hussain,2 where on her husband's death the widow had got into possession without the consent of the heir and ubtained

4. (1918) A I R 1918 Lah 6 (8) . 48 Ind Cas 114. Mt. Chuhar Bas v. Ramanand (The possession of a small residential house by a widow under an arrangement with her cons in exercise of her right of residence is not adverse to the sons.)

(1915) A I R 1915 Low Bur S6 (87, 88) 31 Ind Cas 875. Ma Min Kyin v. Maung Wa (Working lands in turns by mutual arrangement -- No adverse possession)

Note 21

" All 250 : 86 Ind Cas 679

8 Ind Cas 833, Abdulla v.

(1921) 65 Ind Cas 224 (230) (Pat), Abdul Rahman v Walt Muhammad. (1923) A I R 1923 Pat 72 (74) 68 Ind Cas 601 2 Pat 75, Abdur Rahman v. Sheikh Wals Mahamed.

time

[But see (1930) 120 Ind Cas 557 (558) (All), Mt. Mahmuda Bibi v. Abdal Hamid

(1929) A I R 1929 All 326 (327) 119 Ind Cas 445, Karam Ali v Md. Latif.]

2. (1871) 14 Moo Ind App 377 (384) 10 Beng L R 45 17 Suth W R 113 : 2 Suther 531 3 Sar 39 (P C).

Arts. 142 & 144 Notes 21-22

registration of her name as owner in the Collectorate in spite of the opposition of the heir to such application, it was held by their Lordships of the Privy Council that the widow was entitled to retain possession till her dower deht was paid. The contrary view expressed in the undermentioned case that where the widow enters into possession without the consent of the hers her possession would be adverse to the heirs and that the widow would obtain an absolute title after twelve years is, it is submitted, not correct.

In Mutsadi v. Habib Mian, a Mahomedan widow entered into possession of her husband's property on his death partly as heir and partly as a creditor in respect of her dower debt and during the course of such possession asserted a hostile title by getting herself recorded as owner in the Record of Rights. Though she was liable to render accounts to the heirs so that they might ascertain the period of time at which her dower debt becams discharged, she never furnished any accounts. It was held by a single Judge of Patna High Court that the widow acquired an absolute title to the property by lapse of time. It is submitted that this view also doss not seem to be correct in view of the two Privy Council cases referred to above.

The lien of a Mahomedan widow over the property of her deceased husband of which she has come into peaceful possession in lieu of her dower, operates only so long as she remains in possession and gives her merely a right of retention and no title Consequently if the widow is dispossessed by an heir of the husband, her remedy would be a suit under Section 9 of the Specific Relief Act, 1877. She cannot maintain a suit for possession against the heir based on her title arising from prior possession, as such title is available only against persons other than the rightful owner.

22. Possession in lieu of maintenance. - See also Note 19 ante.

Where a person is in possession (under an agreement) in lieu of maintenance for his life, his possession is not adverse to the person entitled after his death. The basis of the rule is that a person who has a lawful tifle to possession, cannot disclaim that title and claim to be in wrongful possession. As has been seen in Notes 18 and 19 ante, possession must be referred to the title which the possessor has. Such a person cannot obtain a title by adverse possession against the person entitled after his death.

Note 22

^{3. (1869) 3} Agra 279 (279), Mt. Oomrao Begum v. Hamid Jan.

^{4. (1917)} A I R 1917 Pat 820 (322) : 39 Ind Cas 579.

 ⁽¹⁹²⁷⁾ A I R 1927 All 531 (535): 103 Ind Cas 363: 50 All 86, Mashal Singh v. Ahmad Hussain.

 ⁽¹⁹²⁵⁾ A I R 1925 P C 192 (185) . 88 Ind Cas 385 (P C), Mt. Bhagwani Kunwar v. Mohan Singh.

⁽¹⁹²⁶⁾ A I R 1926 Nag 129 (192) : 89 Ind Cas 663, Yeshuant v. Daulat,

 ⁽¹⁹²⁵⁾ A I R 1925 P C 132 (185) : 68 Ind Cas 385 (P C), Mt. Bhagwans Kunuger v. Mohan Sunsh.

Notes 22-24

- But where A was in possession under a grant for maintenance Arts, 142 & 144from B, but B obtained a decree for resumption of the grant but having obtained a decree did nothing further, and A continued in possession for twelve years, it was held by the Privy Conneil that the possession of A from that date was adverse to B.3 The reason is that the possession in such a case could not be referred to any lawful title and was really without any title
- 23. Possession by the holder of a life estate, if can be ndverse tn reversioners. - The possessinn of a person who has only a life estate in the property possessed is not adverse to the person who would be entitled to the property on the death of the former As has been seen in Note 19 ante, the reason is that the possession must be referred to the title which the possessor has, that being only a life estate. Further, the reversioner not being entitled to the property until the death of the life estate holder, there can, as will be seen in Note 79 anfra, be no adverse possession against him. The mere fact that the life estate holder asserts that be has an absolute estate will not enable him to acquire an absolute title by adverse nossession.1
- 24. Possession of property belonging to person under disability.—Where a person enters into possession of property belonging to a person under disability, such as a minor or a lunatic, and the relationship of the parties and the circumstances of the case are such as would, in equity, fasten on the person so entering into possession a trust actual or constructive, the possession of such person would be presumed to be that of a hailiff or agent of the person under disability, and not adverso to him. Thus, the possession of a de facto guardian would be presumed to be on behalf of the miner as his hatliff or guardian and not adverse to him. In Thomas v.

8. (1928) A I R 1928 P C 165 (IG5) 100 Ind Cas 818 (PC), Kesho Prosad Smalt v. Madho Prosad Singh,

Nnte 23

1. (1928) A I R 1929 Oudh 67 (91): 109 Ind Cas 835, Mohammad Ali Khan v. Nusar Als Khan.

Nate 24

- 1, (1938) A I R 1939 Nag 89 (91): 173 Ind Cas 103, Ramps v. Madks. (1928) A I R 1928 Mad 1113 (1117): 51 Mad 977: 117 Ind Cas 113, Maha
 - lakshmamma v. Suryanarayana. (1910) 8 Ind Cas 639 (642) : 12 Bom L R 956 (969) : S5 Bom 79, Vasudeo Almaram v. Eknath Balkrishna.
 - (1938) A I R 1938 Mad 513 (516) : 177 Ind Cas 225, Ramayya v. Lakshmayyo (Hinda dying leaving minor widow—Her mother in-law tak-ing possession—Mother-in-law's possession must be pre-umed to be on behalf of her daughter-in-law.)
 - (1929) A I R 1929 Oudb 153 (154) : 4 Luck 592 : 115 Ind Cas 101, Mt. Lachmin v. Ishurs Prasad (Do.)
 - (1926) 51 Mad L Jour 54 (N R C).
 - (1903) 27 Bom 31 (40) : 4 Bom L R 754, Jostaram v Ram Krishna
 - (1928) A I R 1928 Nag 275 (277) : 103 Ind Cas 433, Mayadad Khan v. Hazari Lal. (Mahomedan father)

[See also (1911) 9 Ind Cas 505 (506) (Mad), Thandas araya Odayan v. Narayana Goundan. (Property allotted to minor on partition Arts. 142 & 144 Note 24 Thomas,² the principle on which this possession was not regarded as adverse to the minur was stated in bit that the possession must be referred to the tith of the possessor as guardian, and that possession is nover considered adverse if it can be referred to a lawful titlo. In that case a father entered into possession of a certain estate belonging to his children. Vien Chancellur Sir W. Pago Wood observed as follows:

"In this cash a father, who had several children entitled th estates on the death of his wife, all the children being under age at that time, entered upon the estates. I am of opinion, that, prima facie, unless there is strong evidence to the contrary, his entry must be taken in be no behalf of his infant children and as their natural guardian - the guardian in secace of the plaintiff he could not be, for such guardianship terminates when the child attains fourteen years of age; but considering the right of the father as the natural guardian of the infant plaintiff, and the practice of this Court in making allowances for maintenance, he having entered and received the rents and profits, and there being an evidence of his not having discharged the obligation imposed upon him of maintaining his children, remembering the fact that they were all under his own charge and wern infants, I think I must reasonably infer that tho entry was an entry on their behalf and as their guardian and was totally different from the case of a mere stranger entering upon property under similar circumstances."

In Ma Ngue Namg v. Maung Tha Maung, A, a father, convoyed a share of certain property in B, his daughter who was a minor, but continued to be in possessinn admitting B's title to it. It was held by their Lordships of the Privy Council that such possession was not adverse to the daughter. Similarly, in Ghulam Mohomed v. Ghulam Hassain, where a mother was in possession of certain properties belonging to ther minor children, it was held by their Lordships of the Privy Council that such possession was not adverse to the minors.

but the uncle continuing in possession after partition—Held, presumption was that the uncle held possession for his minor nephew.

2. (1855) 110 R R 107 (110) : 2 Kay & J 79 : 25 L J Ch 159 : 1 Jur (N S) 1160 : 4 W R (Engl 135.

S. (1929) A I R 1929 P C 55 (57) : 7 Rang 4 : 114 Ind Cas 595 (P C).

4. (1932) A I R 1932 P C 81 (87, 88) : 59 Ind App 74 : 54 All 93 : 136 Ind Cas 454 (P C).

See also the following cases to a similar effect:

v. Ramter's profrom the

Indalam-

mal.

The presumption in the above cases, is, however, a rebuttable Arts, 142 & 144 one, and it is open to the guardian to show that he entered into possession on his own behalf adversely to the minor.5 But once it is shown that possession once commenced as a guardiau, it will continue to be so even after the wards attained their majority.6 For, as observed in Thomas v. Thomas,7 once a purson enters as guardian, the Court would never allow him to set up any other title to the estate. In the undermentioned cases, the view has been assumed that a person entering on the property of a person under disability under circumstances rendering such possession one on behalf of the latter, can make his possession hostile and adverse by asserting a hostile title by some overt act after the disability has ceased.

It has been held by the High Court of Bombay in the undermentioned case, following the English case of Morgan v. Morgan, 10 that even where a more stranger enters on the property of persons under disability, his possession must be considered to be that of a bailiff or agent of the person under disability, 102. The High Court of Madras has, on the other hand, held, following Thomas v Thomas, 11 that it cannot be stated as a general proposition that there could be no adverse possession of property which belongs to a person under disability during the continuance of the disability and that the

> (1909) 1 Ind Cas 120 (122) : 83 Bom 293, Usuabas Mangeshrap v. Vithal Vasudeo Shette (Mother's possession presumed to be as guardian) 1

5 (1928) A I R 1923 Cudh 61 (76) . 74 Ind Cas 225, Rudia Pratap Singh v. Numan Prasad Singh [See also (1910) 7 Ind Cas 505 (525) (Lah), Husama v Salub Nur]

C, (1873) L R 17 Eq 378 (399, 400) 43 L J Ch 495 29 L T 862 22 W R (Eng) 290, Howard v Earl of Shrewsbury,

(1910) 8 Ind Cas 639 (642) 12 Bom L R 956 (968, 969) 35 Bom 79, Vasudeo Atmaram v Ehnath Ballrishna

7. (1855) 110 R R 107 (110) 2 Kay & J 79 . 25 L J Ch 159 1 Jur (N S) 1100 . 4 W R (Eng) 185.

8, (1910) 8 Ind Cas 639 (642) . 35 Bom 79, Vasudeo v. Eknath.

(1889) 1889 Bom P J 219 (219), Gottnd v. Jaya. (Plaintill's expulsion from the house amounts to such overt act) (1910) 8 Ind Cas 728 (730) (Ondb) Mohammad Azım Ehan v Bergray Singh,

(Mere mutation of names in guardian's favour not such an overt act) (1933) A I R 1933 Bom 287 (293) 57 Born 488 145 Ind Cas 262, Faku gouda

v. Duamawa (1933) A I R 1933 Nag 387 (389) 148 Ind Cas 237 30 Nag L R 68, Sheodin. lal > Narayandas (Mere letting ont of a portion of the property in his own name, by a person looking after the same during the minority of the rightful owner or person for whom it is natural to do so, does

not amount to such assertion of title or ouster as to bar the title of the rightful owner by adverse possession) 9. (1910) 8 Ind Cas 639 (642) 35 Bom 79, Vasudeo Atmaram v Eluath Bal*krishna*

10 (1737) 1 Atk 490 (489) 25 E R 310 (The rule applies even to a stranger entering into possession of a minor's property)

10a See (1903) 2 Ch 40 (61) 72 L J Ch 473 88 L T 403 51 W R 501, In re Biss, Biss v Biss (Possession of a stringer of infint's property must be taken to be as a bailiff or agent for the infant)

11. (1855) 110 R R 107 (110) 4 W R (Eng) 135 2 Kar & J 79 25 L J Ch 153: 1 Jur (9 N) 1160

Note 24

Arts. 142 & 144 Notes 24-25 question in each case has to be decided with reference to the anterior relationship between the person taking possession and the person under disability, and to whether any circumstances exist which would entitle the Court to hold that the person who entered into possession did so under circumstances which would, in law, make him only an agent or a bailiff of the person under disability. The High Court of Bombay also has in a later case held that a distinction is to be drawn between the possession of the guardian and the possession of a stranger between whom and the minor there is no antecedent relationship. The properties of the possession of the guardian and the possession of a stranger between whom and the minor there is no antecedent relationship. The properties of the possession of the guardian and the possession of the guardian and the possession of a stranger between whom and the minor there is no antecedent relationship. The properties of the properties of the possession of the guardian and the possession of a stranger between whom and the minor there is no antecedent relationship.

It was held in the cases cited below that where the guardian conveyed the nunor's property to a stranger, who purchased it bona fide, his possession would be adverse from the date of his entry on the property.

Where a person enters into possession on behalf of a person under disability, a suit by the latter or his representative against the fermer for possession would be governed by Article 144, inasmuch as the original entry of the defendant was not adverse to the ulaintif...!

25. Possession of insolvent. - There is a conflict of oninion as to whether the possession of moperty by an inselvent after his adjudication and before his discharge can be adverse against the Official Receiver or Assignce. In Krishtocomul Mitter v. Suresh Chunder Deb. Mr. Justice Wilson expressed the epinion that the nessession by the insolvent may be adverse to the Official Assignee. This view was followed by Mr. Justice Bakewell in Balkrishna Pillas v. Narayanasamy Naidu 3 In Official Assignce v. Moorli Doss.3 Wallis, J., dissented from the view expressed in Krishtocomul's case1 and held that the possession of the insolvent is not adverse to the Official Assignee. He rested this view on two grounds: first. that the inselvent acquiring property is to be regarded as the agent of the Official Assignee, that his possession must therefore be referred to his title as agent and was not adverse to the Assignee; secondly. that even if the insolvent acquired property by adverse possession. it would eo instanti become vested again in the Official Assignce. The case went up on appeal in Ratna Bai v. Official Assignce4 12. (1922) A I R 1922 Mad 12 (15): 45 Mad 361: 70 Ind Cas 678, Sectaramaraju

Note 25

v. Perumal Ammal.

 ⁽¹⁹²²⁾ A 1 K 1922 Mad 12 (15): 45 Mad 361: 70 Ind Cas 678, Sectaramaraju
 v. Subbaraju.
 (1933) A 1 R 1933 Bom 287 (297): 57 Bom 488: 145 Ind Cas 262. Fahr-

gowda v. Dyamarca. 14. (1930) A I R 1930 Mad 708 (710): 126 1nd Cas 632, Sorimuthu Thondeman

[[]See also (1893) 1893 Bom P J 403 (405), Vishvanath v. Vaman.] 15 (1910) 8 Ind Cas 639 (643): 35 Bom 79, Vasudeo Atmaram v. Elnath Bal-krishna.

^{1. (1886) 8} Cal 556 (559) : 12 Cal L R 253.

^{2. (1912) 17} Ind Cas 14 (15) (Mad).

^{3. (1914)} A I R 1914 Mad 238 (239) : 22 Ind Cas 271.

^{4. (1916)} A I R 1916 Mad 415 (417) . 29 Ind Cas 168.

Arts. 142 & 144

Notes 25-26

before a Bench of two Judges. The judgment of Wallis, J., was confirmed, but different reasons were given for coming to that conclusion. According to Mr. Justice Sadasiva Iver, the insolvent was in the position of an exmess trustee for his ereditors by force of statutory provisions, and, since a trustee cannot plead adverse possession as against the cestur que trust, his possession cannot be adverse to the creditors and therefore to the Official Assignee who represents the creditors. He was also of opinion that on the analogy of the rule that limitation ceases to run as soon as a suit is filed whatever be the length of time during which the suit is nending. time will not run against the Official Assignee during the pendency of the Insolveney proceedings. Mr. Justice Namer, the other Judge constituting the Bench, doubted whether the doctrine of agency could be applied as between the insolvent and the Official Assignee, though it might be resorted to in regard to the relations between the insolvent and third parties. He also doubted whether the

doctrine of agency was an answer to the claim by adverse possession

But be held that the Limitation Act did not apply to such cases 26. Possession of mortgagor, when becomes adverse to the mortgagee. - A executes a simple moitgage in favour of B and remains in possession of his property. His possession or the possession of his transferee cannot be adverse to B for the reason that he is not entitled to possession at all under his mortgage 14 (See Note 78 infra) A executes a mortgage in favour of B. There is a stipulation in the mortgage deed that on default in payment as specified in the document, the mortgagee would be entitled to take possession of the mortgaged property. A commits default It has been held that the possession of the mortgagor from the date of default would be without title and would be adverse to the mortgagee, and that a suit by the mortgagee would be barred after twelve years from that date 1 In the undermentioned case,2 a mortgagee was entitled under the terms of the mortgage to enter into possession of the mortgaged property on default in payment committed by the mortgagor. After the occurrence of the default contemplated, a third person obtained a money decree against the moitgagor, purchased the property himself in execution of his decree and was in possession thereof believing himself bona fide to be a full owner. It was held by the Privy Council that his possession was adverse to the mortgagee and that the latter could not recover the property after twelve years.

Note 26

¹a (1916) A I R 1916 Oudh 232 (233) 33 Ind Cas 657 18 Oudh Cas 369, Mahesh Baksh Singh v ManoharLal

 ^{(1871) 14} Moo Ind App 144 (150) 8 Reng L R 104 16 Suth W R P C 33 2 Suther 450 2 Sur 711 (P C), Brojonath Koondoo v Khelut Chunder Ghove

[[]But see (1874) 22 Suth W R 543(545) 14 Beng L R 315, Mt Munket Kooer v. Shaikh Munnov (Possesson of mortgager after default of priment is with permission of mortgager)

 ^{(1871) 14} Moo Ind App 101 (111, 112) 16 Suth W R P C 19 8 Deng LR 122.
 Suther 457 2 Str 698 (P C). Anundo Woyce Dosee v Dionendro Chunder

Arts. 142 & 144 Notes 26-28

But, can the mortgageo suo on his mortgage, even though his right to possession may be barred by reason of the adverso possession of the mortgagor for twelve years? It has been held in the undermentioned easo3 that a suit on the mortgage would not be barred. In cases of mortgages by conditional sale governed by the old Bengal Regulation 17 of 1806, there was no provision for a suit for foreelosure but the mertgagee who wished to foreclose had to get a notice issued to the person entitled to redeem, of his intention to forcelose. The person entitled to redcem had one year of grace allowed to him from the date of such notice to redeem the mortgage. After the expiry of the year of grace the mortgagee became the full owner, and the mortgagor's right of redemption was forcelosed and lost. The possession of the mortgager after the expire of the year of grace would be adverse to the mortgagee and a suit for possession twelve years after the year of grace expired, would be barred by limitation.4 Where in such a mortgage there was also a stipulation that on default the mortgageo would be entitled to take possession of the mortgaged property, and default was committed, it was held that the possession of the mortgager after the date of the default was adverse to the mortgagee, and if the mortgagee's suit for possession became harred before the coming into force of the Transfer of Property Act (which created the right to sue for foreclosure), the mortgagee's rights were barred not only in respect of the right to possession but also in respect of the right to enforce the mortgage itself.6

See also Note 9 to Article 135, ante.

- 27. Possession of a co-mortgagor who redeems the mortgagee. - See Note 3 to Article 148, infra.
- 28. Possession of mortgagee .- Where a mortgagee who is not entitled as such to the possession of the mortgaged property, enters into possession of such property without title, his possession is clearly adverse to the mortgagor from the date of his entry into such possession. Thus, where a mortgagee not entitled to possession
- 3, (1913) 21 Ind Cas 773 (773) (Mad], Kondayya v. Subbayya Chetty.
- 4. (1918) A I R 1918 Lah 198 (201) : 45 Ind Cas 563 : 1918 Pun Re No. 79 : Ratan Das v. Mt. Guran.
 - (1884) 10 Cal 68 (72] : 13 Cal L. R. 53, Modun Mohun Choudhry v. Ashad Ally Beparee.
- 5. (1918) A I R 1918 Lah 198 (201) . 45 Ind Cas 563 : 1918 Pun Re No. 79,
 - Ratan Das v. Mt. Guran. (1884) 10 Cal 68 (71, 72] 13 Cal L R 53, Modun Mohun Chowdhry v. Ashad Ally Beparce.
 - · Ras v Bharau Ras.
 - . 276) · 1912 Pan Re No. 91.

Note 28

1. (1931] A I R 1931 Oudh 69 (71) . 127 Ind Cas 252, Humayun Qadar v. Suravya Begam. (1914) AI R 1914 Lah 199 (189]: 25 Ind Cas 616, Mula Singh v. Budh

Singh.

by virtue of his mortgage, enters on the property by virtue of Arts, 142 & 1. a purchase from the mortgagor which is found to be invalid, his possession will be adverse to the mostgagor.2 Similarly, where a mortgagee not entitled to possession as such obtained a foreclosure decree under Bengal Regulation 17 of 1806 and in pursuance thereof obtained possession of the mortgaged property, it was held that if the decree was found not binding on the mortgagors, the possession of the mortgagees would be adverse to the mortgagors 3

A mortgagee entitled to possession of the mortgaged property under the terms of his mortgage, cannot, during the subsistence of the mortgage, convert his possession, by assertion or unilateral act, into one adverse to the mortgagor.4 The reason is that his possession

```
(1926) 93 Ind Cas 934 (935) (Lah), Jawahar v. Amar Chand.
```

2. (1934) A I R 1934 Lah 902 (904) . 16 Lah 12: 154 Ind Cas 243, Nizam Din Khan v Rashid Als Khan

4, (1962) 1862 Suth Huncoman

gagee exists . not apply and possession of the mortgagee will not become adverse.) (1904) 32 Cal 296 (312) 32 Ind App 23 9 Cal W N 201 2 All L Jour 71 .

redeem). (1926) A I R 1926 Pat 512 (513) · 97 Ind Cas 348 6 Pat 103, Dinanath Rai v. Rama Ras.

(1920) A I R 1920 Mad 834 (838) 52 Ind Cas 675, Kunhunn Panihlar v. Raman (Person entering as simple kanomdar, subsequently taking invalid permanent kanom from an Ooralan, cannot make his possession adverse to the trust)

(1910) 5 Ind Cas 478 (479) (Mad), Sangamma Naucher v. Ramaswamy Nascher,

(1806) 1866 Pun Re No. 58, Chiragh Shah v. Ghusceta.

(1925) A I R 1925 Oudh 182 (183) , 80 Ind Cas 592, Ram Chhor Baksh v. Ram Surat.

(1906) 16 Mad L Jour 5 (6), Lalshm: Nachtar v. Rama Chandra.

(1932) A I R 1932 All 437 (439) 133 Int Cas 366, Arjun Suigh v Mahesha

(1925) A I R 1925 All 417 (419) 86 Ind Cas 849, Ram Prasad Singh v. Babu Lat.

(1920) A I R 1920 Oudh 302 (303) 23 Oudh Cas 269 60 Ind Cas 404, Tilak Chand v Shambhu Singh.

(1923) A I R 1923 Lah 71 (72) 68 Ind Cas 883, Zora v. Chandu

(1926) A I R 1926 Oudh 491 (492) 92 Ind Cas 832, Bajrang Bali v. Mt. Maharajia.

(1924) A I R 1924 Bom 521 (522) 83 Ind Cas 145, Shuappa Malappa v. Atali Lumanna.

(1926) A I R 1926 Oudh 517 (518) 95 Ind Cas 849, Naranhar Prasad v. Mt. Bechas topcol t tom third Pan Dal . Chal Radhan

. Harı Krishna. 72 . 52 Ind Cas 159. Arts. 142 & 144 Notes 26-28

But, can the mortgagee sue on his mortgage, even though his right to possession may be barred by reason of the adverse possession of the mortgagor for twelve years? It has been held in the undermentioned cases that a suit on the mortgage would not be barred. In cases of mortgages by conditional sale governed by the old Bengal Regulation 17 of 1806, there was no provision for a suit for foreclosure but the mortgagee who wished to forcelose had to get a notice issued to the person entitled to redeem, of his intention to foreclose. The person entitled to redeem had one year of grace allowed to him from the date of such notice to redeem the mortgage. After the expiry of the year of grace the mortgagee became the full owner, and the mortgagor's right of redemption was forcelosed and lost. The possession of the mortgager after the expire of the year of grace would be adverse to the mortgagee and a suit for possession twelve years after the year of grace expired, would be barred by limitation Where in such a mortgage there was also a stinulation that on default the mortgagee would be entitled to take possession of the mortgaged property, and default was committed, it was held that the possession of the mortgager after the date of the default was adverso to the mortgagee, and if the mortgagee's suit for possession became barred before the coming into force of the Transfer of Property Act (which created the right to sue for forcelosure), tho mortgagee's rights were barred not only in respect of the right to possession but also in respect of the right to enforce the mortgage itself.6

See also Note 9 to Article 135, ante.

27. Possession of a co-mortgagor who redeems the mort-gages. — Seo Note 3 to Article 148, infra.

26. Possession of mortgagee.—Where a mortgagee who is not entitled as such to the possession of the mortgaged property, enters into possession is such property without title, his possession is clearly adverse to the mortgager from the date of his entry into such possession. Thus, where a mortgage not entitled to possession

9. (1913) 21 Ind Cas 773 (773) (Nad), Kondayya v. Subbayya Chetty.

4. (1918) A I R 1918 Lab 198 (201) · 45 Ind Cas 563 : 1918 Pun Re No 79 :
Ratan Das v. Mt. Guran.

(1884) 10 Cal 68 (72): 13 Cal L R 53, Modun Mohun Choudhry v. Ashad Ally Beparee.

5. (1918) A I R 1918 Lah 198 (201) : 45 Ind Cas 563 : 1918 Pun Re No 79,

Ratan Das v. Mt. Guran. (1884) 10 Cai 68 (11, 72) 13 Cai L. R. 53, Modun Mohun Choudhry v. Ashad Ally Bepares.

C. (1912) 15 Ind Cas 240 (244) (All), Ram Danar Ras v. Bhirgu Ras

[See also (1912] 15 Ind Cas 275 (275, 276) : 1912 Pun Re No, 94, Nand Lal v Goojar.]

Note 28

1. (1931) A I R 1931 Oudh 69 (71): 127 Ind Cas 252, Humayun Qadar v. Surasya Begam,

(1914) A I R 1914 Lah 139 (189): 25 Ind Cas 616, Mula Singh v. Budh Singh. by virtue of his mortgage, enters on the property by virtue of Arts. 142 & 144. a purchase from the mortgagor which is found to be invalid, his possession will be adverse to the mortgagor.2 Similarly, where a mortgagee not entitled to possession as such obtained a foreclosure decree under Bengal Regulation 17 of 1806 and in pursuance thereof obtained possession of the mortgaged property, it was held that if the decree was found not binding on the mortgigors, the possession of the mortgagees would be adverse to the mortgagors 3

A mortgageo entitled to possession of the mortgaged property under the terms of his mortgage, cannot, during the subsistence of the mortgage, convert his possession, by assertion or unilateral act, into one adverse to the mortgagor.4 The reason is that his possession

```
(1926) 93 Ind Cas 934 (935) (Lah), Jawahar v .imar Chand.
```

- 2. (1934) A I R 1934 Lah 202 (204) 16 Lah 12: 154 Ind Cas 243, Nizam Din Khan v. Bashid .ils Khan.
- 3. (1892) 1892 All W N 51 (51), Manla Ballish v. Tajammal Husain.
- 4. (1862) 1862 Suth W R FB 37 (38) (FB). Muddun Gopal Singh v. Lalla Huncoman Dobay (So long as the relation of mortgagor and mortgages exists between the parties to a suit, the law of limitation will not apply and possession of the mortgages will not become adverse)
 - (1904) 92 Cal 296 (312) 32 Ind App 23 0 Cal W N 201 · 2 All L Jour 71 : 7 Bom L R 1 1 Cal L Jour 594 8 Sar 734 (P C), Khiarajmal v 7 Born L R 1 1 Cal L Jour 374 6 car to 1/2 L June 1 Diam (As between mortgager and mortgager, neither exclusive pos-

not OT. to

redeem).

(1926) A I R 1926 Pat 512 (513) 97 Ind Cas 348 6 Pat 102, Dinanath Rai

(1920) A I R 1920 Mad 834 (839) 52 Ind Cas 675, Kunhunn Panikkar v. Raman (Person entering as simple kanomdar, subsequently taking in alid permanent kanom from an Ooralan, cannot make his possession adverse to the trust)

(1910) 5 Ind Cas 478 (479) (Mad), Sangamma Nauker v. Ramasuamy

(1866) 1866 Pun Re No 58, Chiragh Shah v. Ghuscela.

(1925) A I R 1945 Oudh 182 (183) : 60 Ind Cas 592, Ram Chhor Balsh v. Ram Surat.

(1906) 16 Mad L Jour 5 (6), Lahshms Nachsar v. Rama Chandra.

(1932) A I R 1932 All 437 (439) 138 Int Cas 366, Arjun Singh v. Mahesha Nand.

(1925) A I R 1925 All 417 (419) 86 Ind Cas 849, Ram Prasad Smah v. Babu Lal.

(1920) A I R 1920 Oudh 302 (303) 23 Oudh Cas 269 60 Ind Cas 404, Talak Chand v Shambhu Singh (1923) A I R 1923 Lah 71 (72) 68 Ind Cas 683, Zora v Chandu

(1926) A I R 1926 Oudh 491 (492) 92 Ind Cas 832, Bajrang Bal, v. Mt. Maharana

(1924) A I R 1924 Bom 521 (522) 63 Ind Cas 145, Shuappa Malappa v. Atals Lumanna

(1926) A I R 1926 Oudh 517 (518) 95 Ind Cas 819, Neraular Prasad v. Mt, Bechai

(1866) 1 Agra 15 (16), Ram Dial v. Shah Bazkhan.

(1911) 10 Ind Cas 909 (1000) (All), Gandharp Singh v. Hart Erishna.

(1919) A I R 1919 Oudh 150 (151) 22 Oudh Cas 72 . 52 Ind Cas 159, Mohammad Mohsin v. Mohammad Abid.

(1929) A I R 1929 All 875 (876) 119 Ind Cas 111, Mahomed Earnil v. Mahomed Salim.

- Arts. 142 & 144 (1911) 10 Ind Cas 339 (340) (Mad), Sanharan Moosad v. Othenan Nair. (1882) 1882 Pun Re No. 19, Teju Mal v. Zulfahar Shah, (1874) 21 Suth W R 13 (14), Jecchoo Sahoo v. Syud Mussecoollah. (1890) 14 Bom 279 (291), Bhageant Gound v. Konde Mahadu. (1907) 29 All 610 (617) : 1907 All W N 221 : 4 All L Jour 521, Musaffar Alı Khan v. Parbatı. (1864) 1864 Suth W R 68 (68), Mt. Mohasha v. Mt. Kheendoo, (Possession by mortgages cannot be adverse to the heir of the deceased mortgagor.) (1920) A I R 1920 Cal 937 (938) . 62 Ind Cas 502, Kalı Mahmud Talukdar v. Dina Bandhu Dutt. (Simple mortgagee getting into possession by sale-Sale set aside and mortgagee treated as mortgagee in possession -His possession is not adverse.) (1926) A I R 1926 Sind 145 (118) : 91 Ind Cas 87 : 20 Sind L R 277, Sulleman v. Essa. (1926) A I R 1926 Lah 519 (550) : 95 Ind Cas 9. Jucan Smah v. Ghanta. (1909) 1909 All W N 1 (2) : 4 All L Jour 787 : 3 Mad L Tim 182, Jhabbalal
 - v. Chhajju Mal.
 - (1878) 1 All 655 (657, 658), Als Muhammad v. Lalla. (1915) A I R 1915 All 203 (206): 29 Ind Cas 403, Panna Lal v. Rameshar
 - Sahar. (1916) A I R 1916 Oudh 313 (315) : 19 Oudh Cas 166 : 34 Ind Cas 745, Jagat
 - · Pal Singh v. Harnam Singh. (1916) A I R 1916 Mad 811 (815) : 31 Ind Cas 678, Thottakura Gorindu v. Pepakayala Mallaya. (The denial of the existence of the mortgago or assertion of a proprietary title to the mortgaged property would not
 - give an adverse possession to the morigagee.) (1897) 10 Mad 189 (191), Mussad v. Collector of Malabar. (Do.) (1923) A I R 1923 All 613 (613) : 74 Ind Cas 830, Raghunath v. Jetto Singh.
 - (Do) (1921) A I R 1921 Oudh 124 (125) : 63 Ind Cas 284 : 24 Oudh Cas 155, Mahendra Bahadur Singh v. Chandrapal Singh .- (Do)
 - (1928) A I R 1928 Pat 17 (18): 104 Ind Cas 644, Tale Mahlon v. Lakhraj

. Abdul set up t .--- ctume a light of smt to a a a ın (1929)pers

- (1929) A I R 1929 Lah 691 (692) : 126 Ind Cas 66, Rahmat Allah v. Mt. Mubarah Bibi (Do)
- (1925) A I R 1925 All 34 (35) : 80 Ind Cas 944, Ram Ganesh Ray v. Rup Naram Bas (Do.) (1909) 1908 Pun Re No. 65: 1908 Pun L R No. 90 . 1908 Pun W R No. 113.
- Indar v. Asa Singh. (Do) (1912) 13 Ind Cas 852 (853) (Lah), Lehna Singh v. Santa Singh. (Do.)
- (1911) 11 Ind Cas 429 (430, 431) (Lah), Jug Khan v. Lakshin, Chand. (Do)
- (1916) A I R 1918 Lah 197 (198) : 48 Ind Cas 447, Ram Singh v. Basti. (Do)
- (1930) A I R 1930 Oudh 17 (20): 118 Ind Cas 808, Mt. Gujrals Kunuar v. Bhaguats Din Singh. (Do.) [See (1901) 3 Bom L R 97 (99), Manohar v. Baltant.] [But see (1923) A I R 1923 Lah 534 (535) : 77 Ind Cas 509, Moham.

mad Ramzan v. Municipal Committee, Alipure. (Observation

is only a derivative one and not hostile to the mortgagor. Further, Arts. 142 & 144 as seen in Note 18 ante, the possession must be referred to the title which he has as mortgagee and he cannot he permitted to discard his title as mortgagee and claim to be in wrongful possession.6 In Khairamal v. Daim, their Lordships of the Privy Council observed as follows :

"As between them (i.e., the mortgagor and the mortgagee), neither exclusive possession by the mortgagee for any length of time short of the statutory period of eaxty years, nor any acquiescence by the mortgagor not amounting to a release of the equity of redemption, will be a bar or defence to a suit for redemption if the parties are otherwise entitled to redeem."

It would follow from what has been stated above that the mere fact that the mortgage has been discharged by payment will not render the possession of the mortgageo adverse to the mortgagor from the date of discharge. 72 A contrary view has, however, been held in the undermentioned eases, To namely that the possession in such cases would become adverso to the mortgagor. It has also been held in some cases 70 that the question whether the possession of the mortgagee after the payment of the mortgage money, is or is not adverse to the mortgagor, is always a question of animus or intention

- 5 (1928) A I R 1928 All 726 (730) : 50 All 986 : 118 Ind Cas 177 (F B). Sohan Lal v. Mohan Lal.
 - (1905) 7 Bom L R 772 (789), Mahomed v. Ezekiel.
- 6. (1925) A I R 1925 All 133 (135) . 47 All 73 80 Ind Cas 935. Balha Sunah v. Ram Naram Singh (He cannot set up or acquire title by adverse possession so long as the right to redeem subsists and is not barred by -----

(1936) A I R 1936 Mad 308 (309, 310) . 161 Ind Cas 999, Veettil Kelu v. Chakkara Chappan.)

7 (1904) 32 Cal 296 (912) 82 Ind App 23 9 Cal W N 201 2 All L Jour 71 7 Bom L R 1 1 Cal L Jour 584 . 8 Sar 731 (P C)

7a (1910) 5 Ind Cas 664 (665) (All), Nandan Pat Teuars v Radha Keshun ·Kalwar

(1926) A I R 1926 All 196 (198) 89 Ind Cas 574, Mt. Bets Bas v Tantva (1930) A I R 1930 Cal 15 (16) 56 Cal 1130 121 Ind Cas 407, Harast

Golder v Jaladhar Bisuas

(1898) 20 All 115 (117) 1897 All W N 214, Polhpal Singh v. Bishan Singh. (1910) 7 Ind Cas 355 (386) 33 All 97, Sudarshan Das v Pam Pershad. (1912) 13 Ind Cas 963 (964) 34 All 261, Habihulla v Abdul Hamid.

(1924) A I R 1924 All 522 (523) 83 Ind Cas 740, Gobind Ram v Mt. Ram Koer

(1865) 2 Mad H C R 382 (383), Vanners Purushotlaman Nambudrs v. Pattanattil Kunju Menasan 7b (1925) A I R 1925 Lah 616 (616, 617) 88 Ind Cas 476, Khushalla v Bishan

(1926) A 1 R 1926 All 62 (63) 92 1nd Cas 414 48 All 145, Mt Ram Keer v. Gohand Lam.

7c (1930) A 1 R 1930 Cal 402 (404) 129 Ind Cas 414, Keshab Lall Gossama v. Bhola Nath, (34 All 261 13 Ind Cas 963, Followed)

Arts. 142 & 144 Note 28 of the parties concerned. It is submitted that these last two views do not appear to be correct on principle. The fact of payment would not put an end to the mortgager's right to redeem, and a suit for redemption can be brought within a period of sixty years under Article 148 of the Act. So long as the right to redeem subsists and is not barred by limitation, the relation of mortgager and mortgages subsists and the possession of the mortgagee must he referred to the atmospheric payment of the mortgage considered adverse, unless he actually gives up the property and enters under a different status.\(^{14}\)

Suppose now that the mortgagor sells the equity of redemption to the mortgage, but the sale is found to be void or voidable. Does the possession of the mortgage from the date of the sale become adverse to the mortgagor? It has been held in the undermentioned cases? that it would not, on the general principle that a mortgage cannot, by asserting possession as mortgage into one as owner. The general trend of opinion is, on the other hand, that from the date of the sale the possession of the mortgage would become adverse to the mortgagor. Various reasons

(1933) A I R 1933 Oudh 13 (14): Iio Ind Cas 180, Ram Baksh Singh v.

(1926) A I R 1926 Cal 910 (912) : 94 Ind Cas 342, Keshab Lai v. Bholanath. Td (1929) A I R 1929 All 305 (806) : II9 Ind Cas 568, Jai Nandan Tewars v. Ilmao Keri.

(1925) A I R 1925 AH 133 (185): 47 AH 73: 80 Ind Cas 935, Bahha Singh v. Ram Marain Singh. 7c.(1914) A I R 1914 Mad 489 (493): 37 Mad 423: 15 Ind Cas 843, Ariyapu-

thira Padayachi v. Muthukumaraswami Padayachi.
(1935) A I R 1935 Lah 921 (925): IGO Ind Cas 557, Nawab v. Lachman

Singh. (1929) A I R 1929 Lah 30 (31): I13 Ind Cas 540, Din Muhammad v.

(1929) A I R. 1929 Lah 30 (31): 113 Ind Cas 510, Din Muhammad v Safdar Ali.

(1931) A I R 1931 Lah 902 (904) : IG Lah I2 : 154 Ind Cas 243, Nazam Din Khan v. Rashid Ali Khan.

татаууа.

8. (1928) A I R 1928 All 725 (730): 50 All 986; 118 Ind Cas 177 (F B), Sohan Lal, t. Mohan Lal.

neep tice

ung

(1925) A I R 1925 Mad 566 (567): 87 Ind Cas 331, Dawood Sahib v. Mordeen Batcha Sahib.

(1924) A I R 1924 Mad 720 (720): 80 Ind Cas 561, Aigisa Bivi Ammal v. Kalandarsa Routher.

bave been advanced in support of this view. One reason is that Arts. 142 & 144 though the possession of the mortgagee must be referred to the title which he has, an ouster must be presumed from the date of the sale, and that consequently the possession of the mortgagee would he adverse to the mortgagor. A second reason is that since the parties could, hy common consent, put an end to the mortgagee's estate, the sale would operate as such agreement to put an end to the mortgagee's estate as such, and that therefore, the mortgager would at once he entitled to possession, with the consequence that the possession of the mortgagee thereafter would be advorse to the mortgagor.10 A third reason advanced is that where a change in the character of the possession is brought about by an agreement between the parties or with their expressed consent as distinguished from acquiescence, the possession will become adverse from that date.11 The true reason would appear to be that the rule that possession

- (193)) A I R 1921 Mad 213 (215, 216) 63 Ind Cas 215, Musigadu v. Gopala Reddi
- (1921) A I R 1921 Mad 82 (84) · 44 Mad 253 : 62 Ind Cas 603. Kandaswams Pillay v Chinnabha
- (1917) A I R 1917 All 212 (214) . 40 Ind Cas 121 , 39 All 423, Khedu Ray v. Sheoparsan Rav
- (1921) A I R 1921 Oudh 124 (125) . 24 Oudh Cas 155 63 Ind Cas 284, Mahendra Bahadur Singh v. Chandrapal Singh. (Mortgage with possession-Invalid sale of the property to the mortgages - Latter's possession becomes adverse to mortgagor.)
- (1930) A I B 1930 Lah 71 (72): 120 Ind Cas 481, Prem Das v. Sarbaland. (1925) A I R 1925 Oudh 885 (386) . 87 Ind Cas 188, Sheonath v. Tulss Pat Ram.
 - (See (1929) A I R 1929 Mad 16 (18) . 109 Ind Cas 795. Randaswamy Mudaliar v Ponnuswamy Mudaliar.
 - (1934) A I R 1934 Pat 801 (302) 151 Ind Can 55, Santolhi Misser v. Siro Jha (Relation of mortgagor and mortgagee ceasing by sale of the mortgaged property to the mortgagee.))
- 9. (1928) A I R 1928 All 726 (732) 50 All 986 118 Ind Cas I77 (F B), Sohan Lal v. Mohan Lal (Per Rendall J)
- 10. (1928) A I R 1928 All 726 (731) . 50 All 986 118 Ind Cas 177 (F B). Sohan Lal v. Mohan Lal. (Per Mukern J.)
- 11. (1928) A I R 1928 All 726 (784, 785) 50 All 986 : 118 Ind Cas 177 (F B), Sohan Lal v. Mohan Lal. (Per Snlaman C J)
 - (1926) A I R 1926 Oudh 145 (145) 90 Ind Cas 736, Ibad Ala v Duarka. (Agreement to relinquish equity of redemption not evidenced by document-Still adverse possession against mortgagor starts from date of such agreement)
 - (1922) A I R 1922 Oudh 133 (134) 25 Oudh Cas 83 63 Ind Cas 223, Bashir Husain v Chandrapal Singh
 - (1914) A I R 1914 Mad 578 (579) 16 Ind Cas 694 (696) 37 Mad 545, Usman Khan v Nagalla Dasanna
 - (1930) A I R 1930 Bom 135 (139) 53 Bom 676 . 122 Ind Cas 113. Ahmed Bhauddin v Babu Dei fi (1917) A I R 1917 Low Bur 178 (178) 36 Ind Cas 959, Abdul Hamid v
 - Darrigh Bibi. (1924) A I R 1924 Rang 290 (291) 82 Ind Cas 829, Mg San Chan v Ma
 - Daung U. (1882) 1882 All W N 84 (85), Bhola . Ajudhia Prasad.
 - (1921) A I R 1921 Mad 82 (81) 62 Ind Cas 603 44 Mad 253, Eandasamy Pillay v. Chinnatha.

Arts, 142 & 144 must be referred to the title which the possessor has and that the possessor cannot be permitted to set up any other title to the property, has no application where the mortgagor admits (by execution of the sale deed) that he has no title from that date. The rule above mentioned is really intended for the benefit of the mortgagor and can therefore be waived by him by admitting that he has no title, and that the title is in the mortgagee.

> Where in a suit between the mortgagor and the mortgageo the Court passes a decree that the mortgage is satisfied and that the mortgagor is entitled to immediate possession, it is equivalent to a declaration that the relation between the parties, of mortgagor and mortgagee, has come to nn end. There is no further right of suit for redemption. The possession of the mortgageo after the date of such decree is not referable to any lawful title, and will consequently be adverse.12

> Where A executes a usufructuary mortgage in favour of B and subsequently thereto, enters into an agreement with him to sell the mortgaged property to him, the possession of the mortgagee thereafter is not adverse to the mortgagor.13 There is no admission in such a case as in the case of the execution of a sale deed, that the mortgagor has no title to the property from that date, and the general rule that a mortgagee cannot, by assertion, make his possession adverse to the mortgager, holds good.

> Where A executes a mortgage with possession in favour of B and subsequently sells the mortgaged property to B, but nevertheless the mortgagee holds the property only as a mortgagee, it has been held that his possession is not adverse to the mortgagor.14

> Where a third person who has no right to the equity of redemption purports to sell it to the mortgagee thereof, it is clear that the relationship of mortgagor and mortgagee is not put an end to, and the mortgagee's possession cannot become adverse to the mortgagor.15 In Mata Din v. Ahamad Ali,16 A, a Muhammadan,

> > [See (1991-92) 6 Bom 674 (690) : 7 Ind Jur 96, Gonal Sitaram v. Narhar Apan.]

12. (1914) A I R 1914 All 212 (245, 246); 25 Ind Cas 611 (615), Mt. Zaibunnissa v. Parichhat. (Following 24 All 44.)

(1922) A I R 1922 Mad 407 (408): 70 Ind Cas 33, Omayurupagam Mutt v. Sit assoria Theran. 13. (1925) A I R 1925 Oudh 114 (115) : 93 Oudh Cas 100 : 82 Ind Cas 406. Silla

Sakai v. Dhum Singh. 14. (1937) A I R 1937 Lah 837 (838) : 172 Ind Cas 449, Mt. Dhapan v. Sri Ram. 15 (1807) 01 12 vm 702 (700) 10--3 - 4-- ---

> v. Nanhai. . Als. r Khan v. Kala

Shah.

(1891) 14 Mad 33 (42), Buars v. Puttanna. (1912) 14 Ind Cas 584 (585) : 15 Oudh Cas 89, Amir Ali v. Niazali.

See also Note 5 Point (4) under Article 143 anira and the cases cited there-16. (1912) 13 Ind Cas 976 (978) : 15 Oudh Cas 49 : 31 All 213 : 39 Ind App 49 (P C)

mortgaged to B certain properties with possession in the year 1885 Arts. 142 & 144 for a period of ten years. A died subsequently leaving a minor son C as his heir. X, as de facto guardian of C, sold the equity of redemption to B, the mortgages, in the year 1889. It was held by the Privy Council that the sale was void and B's possession was not adverse to C till 1895, the date of the expiry of the term of the mortgage. Il their Lordships meant by this that the possession of the mortgagee became adverse from 1895, it is difficult to understand the reasoning behind the view, masmuch as on general principles, the possession of a mortgagee as such cannot become adverse to the mortgagor so long as the relationship of mortgagor and mortgagee subsists between the parties. It is also difficult to understand how their Lordships treated the case under the twelve years' rule of limitation, the suit being one for redemption of a mortgage governed by Article 148 of the Limitation Act

A was in possession of B's property under an arrangement by which he was entitled to be in possession until certain moneys which he had disbursed on B's account were paid back to him. Subsequently in settlement proceedings instituted by B. A set up adverse title to the property. It was held in the undermentioned case 17 that from that date the possession of A became adverse to B

Where a mortgagee without right to possession enters into possession, his entry would constitute a dispossession of the mortgagor and therefore a suit by the latter against the former would be governed by Article 142.18 But when the possession of a mortgagee entitled to be in possession under the terms of the mortgage, becomes by reason of subsequent events, adverse to the mortgagor and the latter sues for possession, the suit would be governed by Article 144, as there is no dispossession or discontinuance of possession of the mort. cacor in such a case 19

Where a mortgagee sets up adverse possession against a mortgagor. the onns is on the former to show when and how the possession became adverse.20

- 29. Possession of mortgagee under invalid foreclosure proceedings. - See Note 6 to Article 148
- 30. Possession of mortgagee under mortgage providing that on default the mortgagee should be full owner. - See Note 7 to Article 148

Notes 28-30

^{17. (1911) 9 1}nd Cus 891 (393) 14 Oudh Cus 95 33 All 125 38 Ind App 23 (PC), Muhammad Balar v Muhammad Balar Ali Khan.

¹⁸ See Note 2 ante.

¹⁹ Sec Note 2 ante.

^{20 (1926)} A I R 1926 Oudh 517 (518) 95 Ind Cas 849, Naranhar Prasad v. Mt Bechas

^{(1912) 17} Ind Cas 918 (913) (Low Bur), Vaung Chit Ton . Maung Aung Guan (1913) 22 Ind Cas 65 (67) 9 Nag L R 179, Anjuman Islamia v Hisamal.

Arts. 142 & 144 Notes 31-35

- Possession of mortgages after purchase in contravention of Order 34 Rule 14 of the Civil Procedure Code. — Seo Note 8 to Articlo 148.
- 32. Possession of person entering under void mortgage.— See Note 60 infra.
- 33. Possession by the mortgagee, after redemption, of accessions to mortgaged property. See Note 16 to Article 148.
- 33. Possession of co-mortgage paying off other co-mortagees. Where a mortgage is indivisible and has been made in
 favour of a number of co-mortgagees, and one of them pays off the
 others and remains in possession of the whole property, his possession
 must be deemed to be only that of a mortgage so far as the mortgager is concerned and consequently is not adverse to the mortgager.
 As the co-mortgagee pays off each of the other co-mortgagees, he
 takes their place only as mortgagee,
- 33. Possession of co-owners—General. Since possession is nover considered adverse so long as it can be referred to a lawful title, (see Note 18 ante) the possession of one co-owner, who is entitled as such co-owner to be in possession of the property, must be referred to that title only and cannot be considered adverse to the other co-owners.\(^1\)

Note 34

 (1928) A I R 1923 Lah 366 (368) : 73 Ind Cas 475, Shuja-ud-din Khan v. Sher Muhammad Khan.

Note 35

Cas 678 : 27 Nag

Ali v. Md. Als. d Cas 800 (F B),

Rustam Khan v. Mt. Janks.

(1927) A I B 1927 All 846 (846): 105 Ind Cas 628, Ganga Sahar v. Nihal

Singh. (1873) 5 N W P II C R 122 (127), Yusuf Ali Khan v. Chubbee Singh.

(1883) 7 Bom 34 (38, 39), Dadoba v. Krishna.

(1924) A 1 R 1924 Bom 297 (298): 74 Ind Cas 161, Mohidin v. Ibrahim. (1898) 1898 Bom P J 293 (294), Bapalal Keshilal v. Bapup Chhotalal.

(1999) A. T. B. 1996. Cal. 106 (1999) : 161. Ind. Cas. 450, Numai Chambra v. Mohitosh. Das. (The rule with regard to exclusive possession of a cosharer un fount properties, to the exclusion of other co-sharers also applies to property which is held in common by persons in their capacity as shebaits.)

(1901) 27 Mad 192 (197). 13 Mad L Jour 311, Ramanathan Chetty v. Murugappa Chetty. (In case of more trustees than one, possession of one is measurable of the comparation of the measurable of the comparation of the comparat

Cas 194, Duras v. Duraswami

(1928) A 1 R 1928 Cal 574 (576) : 111 Ind Cas 19, Ramchandra Saha v. Lakshmi Kanta.

(1924) A I R 1924 Cal 256 (357): 72 Ind Cas 33, Joytun Bibs v. Solimuddin Chouhidar (Possession by manager of one of the co-owners is not adverse to the others)

Arts, 142 & 144 Note 35

- (1914) A I R 1914 Cal 283 (284, 285) : 21 Ind Cas 621, Basania Eumari Dasia v. Mohesh Chandra Shaha. (1914) A I R 1914 Cal 362 (363) : 41 Cal 436 : 21 Ind Cas 861, Israil v.
- Samset Rahman. (1870) 14 Suth W R 228 (228), Sockh Lall Bhoogwala v. Goolzar Bhoogwala.
- (1931) A I R 1931 Lah 631 (632) 135 Ind Cas 86, Yara v. Jalal.
- (1924) A I R 1924 Lah 155 (156) 73 Ind Cas 665. Hadavat Khan v. Shahmand.
- (1924) A I R 1924 Lah 293 (294): 69 Ind Cas 671, Muhammad Amin v. Karım Dad.
- (1924) A I R 1924 Lah 479 (479) 80 Ind Cas 519, Jamna Bas v Gonda Ram (Possession of co-parcener (Hindn) who has been converted to another faith is that of a tenant-in-common and is not adverse to the other members of the family.)
- (1887) 11 Mad 116 (127), Subramanyam v. Paramaswaran, (Possession of one uralan is the possession of all)
- (1919) 36 Mad L Jour 12 (12) (Jour) (Critical Note on (1918) 42 Bom 529 : A I R 1918 Born 233, Himatlal Maganlal v. Bhikabhai Amritlal)
- (1913) 18 Ind Cas 358 (859); 1913 Mad W N 381 (381), Ta suddin Sahib v. Als Ahmed.
- (1938) A I R 1939 Nag 423 (131) . 179 Ind Cas 82, Mt. Drawpadi v. Vihram Erishna.
- (1936) A I R 1936 Nag 262 (283) 165 Ind Cas 934, Krishna Barv. Parwati Bar. (1933) A I R 1933 Nag 274 (276) 30 Nag L R 18 . 150 Ind Cas 679,
- Mt Jinbai . Zabu. (1927) A I R 1927 Nag 395 (897) 102 Ind Cas 161, Essanchandra v. Ramlal.
- (1925) A I R 1925 Nag 240 (242) 83 Ind Cas 86, Mt. Bhagas v Bheosen. (1928) A I R 1923 Nag 2 (4) 68 Ind Cas 820, Sakharam v. Deoba.
- (1917) A I R 1917 Nag 211 (211): 42 Ind Cas 291. Sadhuram v. Ramadhin. (1935) A I R 1985 Oudh 387 (391) : 155 Ind Cas 23, Mt, Razana v. Musakeb
- Ali. (1933) A I R 1933 Oudh 560 (561): 149 Ind Cas 1172, Brahma Singh v.
- Raghuras Singh.
- (1933) A I R 1933 Oudh 547 (550) . 148 Ind Cas 582 . 9 Luck 219. Harbhan Dat v. Ladl: Saran. (1933) A I R 1933 Oudh 439 (447) 8 Luck 602 146 Ind Cas 710, Abdul
- Oanum v Abdul Rahman
- (1930) A I R 1930 Oudh 200 (201, 202) 114 Ind Cas 497, Nur Als v. Mt. Shahzadı
- (1930) A I R 1930 Oudh 177 (178) 4 Luck 339 121 Ind Cas 892, Alisher v Wajid Ali
- (1929) A I R 1929 Oudh 257 (259) . 118 Ind Cas 87: 5 Luck 31, Gaya Din v. Gur Din. (1929) A I R 1929 Oudh 284 (296) : 4 Luck 503 . 116 Ind Cas 195, Shee Ray
- v. Atudhiya. (1929) A I R 1929 Oudh 337 (339) . 115 Ind Cas 440, Bashir Ahmed v.
- Parshotam. (1929) A I R 1929 Oudh 402 (401) 119 Ind Cas 866, Mubinul Nisa v Ali Hussain
- (1923) A I R 1928 Oudh 449 (400) 112 Ind Cas 522, Mahomed Jamil v. Makomed Hafiz
- (1926) A I R 1926 Oudh 464 (466) 96 Ind Cas 455: 2 Luck 172, Sidkeshuar v Ganga Sagar (1926) A I R 1926 Oudh 258 (259, 260) 92 Ind Cas 685 1 Luck 62, Maha-
- deo Prasad v. Ram Phal (1925) A I R 1925 Oudh 510 (511) 85 Ind Cas 387, Ram Nulh v Janks.
- (1925) A I R 1925 Oudh 241 (243) 78 Ind Cas 282, Abdul Shahur Khan v. Mohd. Al. Khan
- (1925) A I R 1925 Oudh 208 (209) 80 Ind Cas 619, Chhoten Lal v. Hancoman Singh.
- (1924) A I R 1924 Oudh 266 (271) 27 Oudh Cas 77 78 Ind Cas 895, Indarpal Singh v. Thahur Din Singh.

Arts, 142 & 144 Note 35

In Corea v. Appuhamy, a case under the Cevlen Prescription Ordinance, 1871, where the question was whether the possession of one of the heirs of a deceased Christian, on the basis that he was sole heir, was adverso to the other heirs, their Lordships of the Privy Council observed as follows:

"Entering into possession and having a lawful title to enter, he could not divest himself of that title by pretending that he had no title at all. His title must have accrued for the benefit of his co-proprietors. The principle recognized by Wood, V. C.

- (1917) A I R 1917 Oudh 179 (180) : 39 Ind Cas 493, Lala Jagan v. Mathura Prasad, (Among members of a joint Hindu family, separation in mess denotes conversion to lenancy-in-common only, and does not give rise to adverse possession unless disclaimer is proved)
- (1925) A I R 1925 Pat 492 (493) 87 Ind Cas 736, Kameshwar Naram Sungh v. Janardhan Prasad.
- (1929) A I R 1929 Rung 211 (213); 7 Rung 161; 118 Ind Cas 122, Ma Falima v. Monin Bils.
- (1925) A I R 1925 Rang 40 (40, 41); 82 Ind C14 821, Ma San Illa Me v. Ma Tun Me.
- (1010) A I R 1010 Low Bur 107 (108) : 52 Ind Cas 629 : 10 Low Bur Rul 45.
- Hars Pru v. Ms Aung Kraw Zan. (1916) A I R 1916 Low Bar 77 (78): 32 Ind Cas 508, Ma Nyein Me v. Ma Man.
- (1930) 128 Ind Cas 309 (310) (Lah), Hanwant Ram v. Mughli.
- (1928) 100 Ind Cas 864 (865) (Nag), Yakubsha v Kalusha.
- (1929) 107 Ind Cas 211 (212) (Sind), Mahomed Kassim v. Natho Bhano.
- (1924) 79 Ind Cas 279 (279) (Lah), Balmukund v Wazir Chand.
- (1923) 78 Ind Cas 748 (752) (Pesh), Ghulam Haidar Ehan v Sardar Ali-
- (1921) 64 Ind Cas 462 (464) (All), Jagrans Misrans v. Mt. Sheo Dulari. (1921) 64 Ind Cas 471 (472) (All), Lachhmi Narain v. Nannha Mal,
- (1918) 45 Ind Cas 217 (217) (Nag), Raghoba v. Palhoba.
- (1918) 21 Ind Cas 83 (89) (All), Chunder Singh v. Tuindi
- (1910) 5 Ind Cas 171 (175) (Cal), Dijendra Narain Roy v Purnendu Narain
- (1910) 5 Ind Cas 888 (890) : 1910 Pun Re. No. 29, Suraya Jah v Azım.
- (1909) 4 Ind Cas 922 (922) (Lah), Ude Ram v. Dujan.
- (1909) 4 Ind Cas 965 (965) (Lah), Atra v. Ram Kishen.
- (1909) 4 Ind Cas 1004 (1004, 1005) (Lah), Shams Shah v. Hussain Shah.
 - (1893) 3 Mad L Jour 100 (104), Rajyalakshmi v. Suryanarayana.
- (1907) 85 Cal 961 (968) : 12 Cal W N 127 . 6 Cal L Jour 735, Jogendra Nath Ras v. Baldeo Das.
- (1915) A I R 1915 Mad 447 (448) : 25 Ind Cas 573, Muthukrishna Amangar v. Sankaranarayana Iver.
- (1927) A I R 1927 Lah 426 (427): 102 Ind Cas 426, Mehran v. Bahimi. [See (1903) 5 Bom L R 225 (227), Rajaram v Nanchand. (Joint possession)]
 - [But see (1903) 2 Low Bur Rul 184 (185), Ma Ye v. Maung Hlaw. (Where a co-heir remains in possession of a property for more than 12 years without any agreement between him and other co-heirs, he acquires right in the said property by adverse possession]
- 2. (1914) A I R 1914 P C 213 (245) : 1912 A C 280 : 81 L J P C 151 (P C).

in Thomas v. Thomas holds good. 'Possession is never con. Arts, 142 & 144 sidered adverse if it can be referred to a lawful title'. His possession was, in law, the possession of his co-owners. It was not possible for him to put an end to that possession by any secret intention in his mind. Nothing short of ouster or something equivalent to ouster could bring about that result."

It follows that if there is ouster or something equivalent to it, then the possession of the co-owner will be adverse to the others.4

3, (1856) 25 L J Ch 159 (161) 2 Kay & J 79 4 W R (Eng) 135 110 R R 107 1 Jur (N S) 1160

4 (1866) 10 Moo Ind App 511 (535) 2 Sar IS9 (P C), Jowala Balsh v. Dharum Sungh

(1937) A I R 1937 AR 300 (303) . 169 Ind Cas 125, Mt. Jaiders Kuars v. Dalshins Din

(1933) A I R 1933 All 173 (175) · 55 All 173 149 Ind Cas 819. Ambika Prasad v Sada Sheo Lal.

(1932) A I R 1932 All 99 (106) 54 All 210 138 Ind Cas 445, Kanhasya Lal v R H Shinner (Limbirdar is not a trustee for the co-sharers, and he can, therefore by withholding and appropriating to his own use the profits, acquire a title by adverse possession against them)

(1929) A I R 1929 All 910 (912) 121 Ind Cas 102, 4bhey Ram v Jhanda (1922) A I R 1922 All 433 (431, 435) 65 Ind C1s 75, Uustafakhan v Mt. Dulars (Usurpation of share by one consented to by others-Possession may be adverse)

(1884) 1884 All W N 296 (296), Hidayat-un-nissa v. Ahsan Ali

(1896) 1896 Bom P J 200, Gitabas v Daltubou a,

(1875) 1875 Bom P J 351, Vidyashankar v Ganpatram.

(1895) 22 Cal 954 (960), Mahomed Akram Shaha v Anarbi Choudhrani.

(1921) A I R 1921 Cal 647 (652) 67 Ind Cas 31, Jacannath v. Chandre Bibi

(1919) A I R 1919 Cal 634 (636) 46 Cal III 45 Ind Cas 783, Purna Chandra Pal v Baroda Prosanna Bhattachariya

(IO18) A I R 1018 Cal 64 (64) 48 Ind Cas 692, Chand Bibs v Lal Mohamad (1926) A I R 1926 Lah 644 (644) 94 Ind Cas 486, Bishna V Narain Singh

(1919) A I R 1919 Lah 114 (115) 50 Ind Cas 550 Lakhera v Wah u (1937) A I R 1937 Lah 552 (556) I L R (1937) Lah 276 172 Ind Cas 37.

Zafar Husam v Md. Ghras ud.dun (1914) A I R 1914 Lah 284 (285, 286) . 1914 Pun Re No 45 22 Ind Cas

805, Akbar : Tabu (1889) 1889 Pun Re No 104, Sargad Als Nanas v. Sargad Abdul Hussain.

(1926) 94 Ind Cas 550 (551) 8 Lah L Jour 129 (131), Karam Din v Vehr Din (1917) 32 Mad L Jour 39 (40) (Jour) (Cratical Note on (1916) 39 Mad 879 A I R 1916 Mad 139, Vellayutham Pillas v Subbaraya Pittas)

(1936) A I R 1936 Nag 80 (85) 31 Nag L R Supp 191 162 Ind Cas 577, Ratnasingh Chhatrs v Javramsingh Chhatrs

(1900) 19 C P L R 99 (100), Sheodayal Singh v Bhagirath Singh (1926) 16 Nag L Jour 68 (71), Faktra v Mt. Mamocnabi

(1931) A I R 1931 Oudh 881 (382) 132 Ind Cas 772, Sheoraj Narain v Jagannath Prasad (1927) 107 Ind Cas 866 (866) 5 Oudh W N 85 (86), Ram Narain v Mannu

Lal. (1929) A I R 1929 Pat 694 (626) 117 Ind Cas 636, Ramlalhan Singh v. Chathu Sahas

(1927) A I R 1927 Pat 145 (163) 6 Pat 506 106 Ind Cas 620, Ishuara Prasad v. Hart Prasad (1916) A I R 1916 Pat 857 (360) . 34 Ind Cas 466, Singhesicar Missir v.

Rameshkar Jha (1928) 107 Ind Cas 866 (866) (Ondh), Ram Narain v Mannulal.

Arts. 142 & 144 If there is no ouster or exclusion, the possession of one is not adverse to the others.5

(1910) 6 1nd Cas 695 (696) (All), Ganpat Singh v. Mussas Singh,

(1909) 1 Ind Cas 322 (323). 33 Bom 317, Amrila Ravny, Shridhar Narayan.

5. (1905) 27 All 348 (350) : 2 All L Jour 110n : 1905 All W N 15, Raf Bahadur v. Bharat Singh.

(1905) 27 All 436 (439, 440) : 2 All L Jour 107 : 1905 All W N 86, Mehinlal v. Badra Prashad.

(1888) 10 All \$48 (346): 1888 All W N 33. Hashmat Begam v. Mazhar Husain.

(1937) A 1 R 1937 All 124 (125) : 167 Ind Cas 371. Ram Manchar v. Baboo Singh.

(1935) A 1 R 1935 All 774 (775): 155 Ind Cas 824, Baboo Singh v. Ram Manohar.

(1934) A 1 R 1934 AR 193 (195) . 56 AH 582 : 150 Ind Cas 81, Fazal Hussain v. Muhammad Kazım.

(1933) A 1 R 1933 All 173 (174): 55 All 173: 149 Ind Cas 819, Ambika Prasad v. Sada Shee Lal.

(1932) A I R 1932 All 666 (667) : 189 Ind Cas 176 : 54 All 742, Md. Mohit Ullah x. Bibi Halima Begain,

(1931) A I R 1931 All 551 (551, 552) : 132 Ind Cas 201, Amfad Als v. Azızuddın.

(1927) A I R 1927 All 410 (411) : 100 Ind Cas 650, Mewa Ram v. Lal Sahai. (1927) A I R 1927 All 454 (457) : 102 Ind Cas 60 : 49 All 768, Harkesh Singh

v. Mt. Harden. (1927) A I R 1927 All 717 (719) : 101 Ind Cas 501 : 49 All 606, Amar Singh

v Gound Rain. (1926) A I R 1926 All 663 (664): 97 Ind Cas 245: 48 All 663, Motichard v.

Kalikanand Singh. (1923) A I R 1923 All 291 (291) : 71 Ind Cas 640, Hafts Abdullah v. Alli.

(1923) A 1 R 1923 All 418 (419) : 71 Ind Cas 1033, Jharap Rai v. Jamt Rai, (1928) A I R 1928 All 447 (447, 448) : 71 Ind Cas 653, Shahur v. Husaini

Bibi. (1922) A 1 R 1922 All 899 (399) : 64 Ind Cas 24, Deckinandan v. Zamir Husain Khan.

(1915) A I R 1915 All 30 (32): 37 All 203: 26 1nd Cas 922, Ahmad Raza Khan v. Ram Lal.

(1915) A 1 R 1915 All 138 (139) : 28 Ind Cas 276, Mallah v. Behari.

(1908) 5 All I. Jour 511 (512, 513) : 1903 All W N 239, Parbati v. Ram Prasad.

(1885) 1885 All W N 51 (52), Karımdad Khan v. Faizan Bibi.

(1905) 29 Born 300 (304) . 7 Born L R 252, Gangadhar v. Parasharam.

(1901) 25 Bom 862 (365, 366) : 3 Bom L R 47, Jagritandas v. Baj Amba, (1886) 10 Born 24 (27), Nula Ramchandra v. Gound Ballal.

(1883) 7 Pom 31 (38, 39), Dadoba v. Krishna.

(1929) A 1 R 1929 Bom 141 (143) : 118 1nd Cas 785, Bai Jin v. Bai Bibanboo.

(1921) A 1 R 1921 Bom 77 (78) · 64 Ind Cas 552, Shulingarpa v. Satyata Larman.

(1880) 1880 Bom P J 311, Atmaram Ban v. Madhao Rav Bapun. (1875) 12 Pom H C R 148 (153, 154), Narayan Baban v. Pandurang Ram-

chandra. (1907) 35 Cal 961 (968) : 6 Cal L Jone 735 . 12 Cal W N 127. Joseph Nath

Ras v. Baldev Das Maruars. (1904) 31 Cal 970 (973) 9 Cal W N 32. U salb: Bibee v. Umahania Karmokar.

(1891) 19 Cal 253 (264) . 19 1nd App 48 : 6 Sar 133 (P C), Lachmeswar Singh v. Managar Hossein. (1936) A I R 1936 Cal 34 (36) : 160 1nd Cas 870, Mahendra Narayan v.

Dakshina Banjan. (1936) A I R 1936 Cal 106 (109, 110) : 161 Ind Cas 450, Normal Chandra v.

Mohstosk Das.

The question next arises as to the meaning of the word "ouster." Arts. 142 & 144

Arts. 142 & 144 Note 35

- (1985) A I R 1935 Cal Cii (649): 158 Ind Cas 656, Indian Iron and Steel Co v. Dava Gepal Thabur. (Transferres of a co shebast purporting to come in as co-shebaits—Their pessession is not such as to enable acquisition of title against co-shebaits unless it amounts to an ouster of other co-shebaits.
- (1934) A I R 1934 Cal 356 (363) . 60 Cal 1406 149 Ind Cas 410, Subodh Chandra v. Bhubalika Dasse
- (1933) A I R 1933 C d 253 (258) : 143 Ind Cas 403, Suarnamoyee Dass v. Probodh Chandra
- (1930) A I R 1930 Cal 180 (185) · 126 Ind Cas 36, Panchanan Banerja v. Surendra Nath.
- (1929) A I R 1929 Cal 250 (252) . 56 Cal 616 : 117 Ind Cas 593, Biswanath Rabina Khatun.
- (1928) A I R 1928 Cal 396 (397) 107 Ind Cas 741, Mahendra Nath Bisuas
- v Charu Chandra (1927) A I R 1927 Cal 65 (68) 97 Ind Cas 539, Ashutesh Royv. Manemohan
- Roy (1927) A I R 1927 Cal 177 (179) . 98 Ind Cas 43, Debendra Lal Rhan v. Pitambar Bera
- Pitamoar Bera (1926) A I R 1926 Cal 524 (525) 91 Ind Cas 610, Rasah Al; v. Abdul Basid. (1925) A I R 1925 Cal 469 (470) 82 Ind Cas 822, Jinnatennessa v. Abdul
- Halim Munshi (1924) A I R 1924 Cal 45 (46) 50 Cal 487 74 Ind Cas 193. Bhairabendra
- v Rajendra Naram (1924) A I R 1924 Cal 1016 (1016, 1047) 82 Ind Cas 892, Hatim Ali v.
- Abjai Khan. (1923) A I R 1923 Cal 18 (21): 72 Ind Cas 680, Kaslash Chandra v. Bejoy
- Chandra. (1928) A I R 1928 Cal 310 (310) . 67 Ind Cas 300, Hemengum Dass v. Sital Manda! (If members of a joint family are separate only in mess and
- not in estate, there can be no adverse possession amongst them) (1922) A I R 1922 Cal 8 (2) . 65 Ind Cas 8, Joy Maram Sen Ukil v Sribanta Roy
- (1922) A I R 1922 Cal 54 (55) 68 Ind Cas 200, Jogendia Nath v. Rajendra Nath
- (1920) A I R. 1920 Cal 473 (473) . 47 Cal 274 . 56 Ind Cas 141, Gounda Chandra v Dina Nath (1920) A I R. 1920 Cal 510 (612) . 47 Cal 182 · 51 Ind Cas 976, Debendra
- Narayan v. Narendra Narayan Narayan v. Narendra Narayan (1918) A I R 1918 Cal 68 (69) 51 Ind Cas 123, Chutaman Pramank v.
- Hriday Nath Kamila. (1918) A I R 1918 Cal 501 (502) 44 Ind Cas 216, Ahamuddin Tamijuddin
- v. Amiruddin. (1916) A I R 1916 Cal 99 (100) 35 Ind Cas 72, Tomejuddi v. Mulai Chowhidar
- (1915) A I R 1915 Cal 357 (360) 27 Ind Cas 465, Abdul Rahman v. Promode Behary
- (1915) A I R 1915 Cal 534 (535, 536) 26 Ind Cas 789, Surja Bibi v Tarap Mondal
- (1915) A 1 R 1915 Cal 610 (612) 27 Ind Cas 1, Bibi Bakhtun v Ahmad Ishaqe
- (1914) A 1 R 1914 Cal 535 (535) . 23 Ind Cas 562, Jagneshwar v. Satish Chondra (1875) 25 Suth W R 53 (54), Shurfunissa Bibee Choudhrain v Kylash
- Chunder Gungopadhya (1873) 20 Suth W R 270 (270), Binonath Rang v Ruleebunnissa Bilee.
- (1872) 18 Suit W R 198 (198), Bitsessuree Dosee v Kallee Coemar Roy.
- (1872) 17 Suth W R 74 (76), Baboo Jahaneby Deo Naram Singh v. Baboo Umbica Pershad Naram Singh

Arts. 142 & 144 Note 35

(1938) 67 Cal L Jour 188 (193), Syed Mahomed Malech v. Shasi Mouls Nag.

(1899) 4 Cal L Jour 254 (255), . imba Debya v. Jnanoda Sundari. (1877) 1 Cal L R 364 (364, 365), Sheibh , isud Ali Khan v. Sheibh Abbar Ali

Khan. (1936) A.I. R. 1936 Cal 106 (110): 40 Cal W. N. 777 (786): 161 Ind Cas 450, Numal Chandra v. Mobitosh Das.

(1920) 24 Cal W N 1057 (1062), Balaram Guria v. Shyama Charan Mandal.

(1899) 3 Cal W N 774 (776), Baroda Sundari Deby v. .innoda Sundari. (1937) A I R 1937 Lah 430 (431, 432) ; 173 Ind Cas 327, Chillar v. Udo

Sidgh. (1935) A I R 1935 Lah 91 (91, 92): 157 Ind C1s 1024, Bal Mukand v. Madan Gopal.

(1935) A I R 1935 Lah 441 (412), .imru v. Santa.

(1933) A I R 1933 Lah 258 (259): 146 Ind Cas 210, Nandlal v. Mt. Karam Ribi

(1933) A I R 1933 Lah 763 (763) · 149 Ind Cas 1112, Mam Raj v. Cholu.

(1933) A I R 1933 Lab 784 (786) : 14 Lab 794 : 148 Ind Cas 1143, Mt. Ghulam Bib v. Mt. Saricar Bib; (1932) A I R 1932 Lab 143 (143, 141) : 135 Ind Cas 686, Anant Ram v.

(1932) A I R 1932 Lab 143 (143, 141); 135 Ind Cas 686, Anant Ram v. Rishore Chand (1930) A I R 1930 Lab 220 (220); 117 Ind Cas 904, Mt. Mansa Deli v.

Sansarn (1929) A I R 1929 Lah 519 (550): 117 Ind Cas 803: 11 Lah 29, Jano v. Narsungh Das.

(1927) A I R 1927 Lah 426 (427): 102 Ind Cas 426, Mehran v. Rahimi. (1927) A I R 1927 Lah 522 (524): 102 Ind Cas 476, Maulu v Beh Ram. (1927) A I R 1927 Lah 886 (887) · 100 Ind Cas 488, Jam Budha v. Dasu

Ram. (1920) A I R 1920 Lah 106 (107) · 56 Ind Cas 169, Balak Ram v. Kaura. (1919) A I R 1919 Lah 133 (134) ; 50 Ind Cas 762, Chanan Mal v. Mela

Ram. (1919) A I R 1919 Lab 271 (271): 50 Ind Cas 746, Nangal Singh v. Shan-

(1916) A I R 1916 Lah 43 (45): 35 Ind Cas 549 · 1916 Pun Re. No. 57,

appa. (1936) A I R 1936 Mad 654 (655) 162 Ind Cas 771, Sundararaja v. Ra-

ghata Reddi (1935) A 1 R 1935 Vad 197 (198) 151 Ind Cas 790, Nangammal v. Bangappa Naicker. (1931) A 1 R 1931 Mad 22 (28); 199 Ind Cas 451, Thiagaraja Pillai v.

(1931) A 1 R 1931 Mad 22 (23); 129 Ind Cas 451, Thiagaraja Pillat v
Appateo Pillat.

(1928) A I R 1928 Mad 652 (654) · 109 Ind Cas 553, Venkatachalam Chel-

**

yer v. Sub-

ıkata Subba

Tumarappa Murajalli

, 393. Velavutham

atachala Dwarka

Arts, 142 & 144 Note 35

- (1916) A I R 1916 Mad 1097 (1098) . 30 Ind Cas 586, Hedayat Als Khan v. Khadar Khan Sahib.
- (1915) A I R 1915 Mad 121 (122) : 26 Ind Cas 316. Ponnuswamy Iver v.
- Permoye. (1914) A I R 1914 Mad 713 (713, 714) . 24 Ind Cas 436, Giri Appayya v.
- Giri Krishtamma. (1927) 1927 Mad W N 696 (697), Arogaisnams v. Prakesi Autmal.
- (1938) A I R 1938 Nag 69 (90) 173 Ind Cas 103, Ramps v. Madks,
- (1917) A I R 1917 Nag 211 (211) 42 Ind Cas 291, Sadhuram v. Ramadhin. (1915) A I R 1915 Nag 125 (128) 11 Nag L R 164 . 31 Ind Cas 464 . Dina v.
- Bishambar Singh (1933) A I R 1933 Oudh 70 (72): 141 Ind Cas 246, Raghunandan v. Sheo
- Prosad. (1932) A I R 1932 Ouhh 144 (145) . 136 Ind Cas 702. Badrs Missr v. Shan-
- har Misir.
- (1930) A I R 1930 Oudh 510 (515) 6 Luck 106 130 Ind Cas 65, Efaz Ali Kidua v Court of Wards, Balarampur Estate. (1928) A I R 1928 Oudh 449 (160) 112 Ind Cas 522, Shah Mohammad
- Jamil Ata . Mohammad Hafiz Ata.
- (1926) A I R 1926 Oudh 258 (259, 260) 92 Ind Cas 685 · 1 Luck 62, Mahadee Prashad v Ram Phal (A co-sharer has a right to repair the whole of the house, and, if he does so, his act cannot be considered to be an act of such an hostile character that it may be considered as equivalent to a denial on his part of the title of the other co-owner or co-owners)
- (1930) A I R 1920 Oudh 305 (306) 95 Ind Cas 985, Ram Manorath v. Sant, (1917) A I R 1917 Oudh 179 (180) . 30 Ind Cas 498, Lala Jagan v. Mathura
- Prasad. (1916) A I R 1916 Outh 202 (203) . 36 Ind Cas 743, Asghar Husain v. Albar
- (1937) A I R 1937 Pat 56 (58) 164 Ind Cas 851. Bergnath Sahu v Jarmangal Prasad.
- (1936) A I R 1936 Pat 66 (68) 160 I C. 1054, Met Singh v Dech Singh.
 (1931) A I R 1934 Pat 495 (488) 154 Ind Cas 1032, Mt Dharichinahatari v Ramyad Zuar (Held principle did not apply in the particular circumstances of the case)
- (1929) A I R 1929 Pat 590 (591) 117 Ind Cas G44, Jageyanand Pande v.
- Gu jananda Pande (1929) A I R 1929 Pat 624 (625) 117 Ind Cas 636, Ramlakhan v. Chathu Sahr
- (1926) A I R 1926 Pat 112 (116) 89 Ind Cas 913, Triahdhara Lai v Abdui Wahabkhan
- (1919) A I R 1919 Pat 537 (538) . 51 Ind Cas 77, Lachmi Sahu v. Radha

v Kalka Smok Ram Nath asel Ali v. Namuddin



(1910) 5 Ind Cas 898 (899) 1910 Pan Re No 20, Jaimal Singh v Gurmukh

(1909) 4 Ind Cas 293 (299) 5 Low Bur Rul 112 Wa Le v Ma Hingin (1909) 2 Ind Cas 15 (18) 5 Nag L R 41, Paud Khan v Gorinda (1909) 1 Ind Cas 252 (253) (Cal), Narayan Chandra v Basant Kumari, (The mere fact that the plaintiffs are mable to show any overt act of ownership within 12 years before suit does not amount to a discontinuance of possession.)

Note 35

Arts. 142 & 144 Actual driving out of a co-owner will, no doubt, clearly be an ouster,6 but such physical eviction is not necessary to constitute ouster.7 It is conceived that in order to constitute ouster, there should be a refusal, express or implied, by the co-owner in possession, to allow the other co-owners to participate in the enjoyment of the property.8 Where the co-owner in possession denies to the knowledge of the other co-owners their title to the property, it may be taken that be impliedly refuses to allow the latter to participate in the enjoyment of the property. Hence, the test to see if there is an "ouster" is to see if the co-owner in possession has openly and unequivocally and to the knowledge of the other co-owners, denied their title to the property.9 In some decisions, 10 however, it has been held that a

- (1909) 1 Ind Cas 322 (323) 33 Bom S17, Amrita Ravys v. Shridhar Nara-[See (1930) A I R 1930 All 125 (126) . 122 Ind Cas 893, Har Nath v.
 - Mt. Phool Roer.
 - (1899) 23 Bom 710 (714) : 1 Bom L R 203, Mahamad Dasu v. Amangs Dasu.
 - (1932) A I R 1932 Cal 634 (638) : 141 Ind Cas 820, Galstaun v. Profulla Kumar.)]
- 6. (1920) A I R 1920 Cal 610 (612): 47 Cal 182 : 51 Ind Cas 976. Debendra Narayan v. Narendra Narayan.
- 7, (1928) A I R 1928 Cal 216 (217): 100 Ind Cas 747: 55 Cal 306, Chandra Kishore v. Bisseswar Pal.
- (1921) A I R 1921 Cal 647 (652) . 67 Ind Cas 31, Jagannath v Chandni Bibi. (Ouster, what constitutes - Violent or intimidating expulsion
 - or repulsion not necessary.) (1926) A I R 1926 Cal 881 (882) : 91 Ind Cas 38, Sabitre Dasse v. Nader Chand (Do.)
 - (1915) A I R 1915 Cal 357 (360) : 27 Ind Cas 405, Lohmath Singh v. Dakeshwar Prosad. (Do.)
 - (1917) A I R 1917 Cal 345 (348) : 35 Ind Cas 36, Jalindra Nath v. Sabidan. nessa Khatun.
- 8. See (1927) A I R 1927 All 454 (457): 49 All 763: 102 Ind Cas 66. Hurketh Singh v. Mt. Hardevs. 9. (1923) A I R 1923 All 291 (291) . 71 Ind Cas 640. Ha fiz Abdullah v. Alli.
- (1936) A I R 1936 Cal 106 (110) : 161 Ind Cas 450, Nermal Chandra v. Mohitosh Das.
 - (1935) A I R 1935 Cal 195 (197): 62 Cal 305. 155 Ind Cas 987, Krashna Chandra v. Purna Chandra.
 - (1922) AIR 1922 Cal 54 (55) 68 LO. 200, Jogendra Nath v. Rajendra Nath. (1921) A I R 1921 Cal 647 (C51) 67 Ind Cas 31, Jagannath v. Chandra Bibi.
 - (1927) A I R 1927 Lah 790 (791) : 100 Ind Cas 145, Mt. Allah Jawai v. Md. Baksh.
 - (1924) A I R 1924 Oudh 266 (272) : 27 Oudh Cas 77 : 78 Ind Cas 895, Inderpal Singh v. Thakur Din Singh. (1936) A I R 1936 Pesh 24 (25): 160 I O. 952, Jang Bahadur v. Abdul Nur.
 - (1935) A I R 1935 Pesh 97 (98): 157 Ind Cas 219, Mahomed Husain Khan v. Ram Rakha
 - (1919) A I R 1919 Low Bur 107 (103) . 52 Ind Cas 629 : 10 Low Bur Rul 45, Hart Fru v. Ms Aung Kraw Zan.

- sul. r v. Bihari Lal. Sheskh Isuf. Vand Singh v. Natha.

[See also (1902) 5 Oudh Cas 6 (9), Jagdamba Bahsh v. Sitla Baksh.] 10. (1922) A I R 1922 Bom 156 (156) . 77 Ind Cas 521. Kesho Naram v. Ramchandra Ganesh

Note 35

bare denial of the title of the other co-owners, though made to their Arts. 142 & 144 knowledge, does not amount to ouster and does not set time running against them. It is submitted that the view is not correct.

The conduct relied upon to prove adverse possession by a coowner against other co-owners must-be unequivocal and inconsistent with his character as co-owner " Evidence which is sufficient to establish adverse possession by a stranger may be totally insufficient to prove adverse possession by one co-owner against other co-owners 12

It will be clear from what has been stated above that mere uninterrupted possession on the part of one co-owner is not adverse to the other co-owners.13 In other words, mere non-participation in the profits of the property by one co-owner and exclusive possession by the other will not be sufficient to constitute adverse possession

```
(1922) A I R 1922 Cal 8 (10) 65 Ind Cas 8. Jon Naram v Srskanta Rov.
(1931) A I R 1931 Lah 439 (441) 131 Ind Cas 105, Salhun v. Malku
```

- (1929) AIR 1929 Lah 519 (519) 120 Ind Cas 278, Indar Singh v. Chamela
- 11 (1921) A I R 1921 Cal 647 (652) 67 Ind Cas 81, Jagannath v. Chandra Bibs. (1920) A I R 1920 Cal 610 (612) 47 Cal 182 51 Ind Cas 976, Debendra
- Narayan v Narendra Narayan (1915) A I R 1915 Cal 534 (535, 536) . 26 Ind Cas 788, Surja Bibi v. Tarap
 - Mondal. (1935) A I R 1935 Lah 63 (64) , 152 Ind Cas 821, Baksh Shah v. Gulam Als
 - (1928) 55 Mad L Jour 223 (227), Venhatachallam Chettar v Annapurni
 - Ammal
 - (1928) A I R 1928 Oudh 449 (460) . 112 Ind Cas 522, Md Jamil Ata v. Md. Haftz Ata
 - (1927) A I R 1927 Oudh 6 (7) . 98 Ind Cas 80, Mt. Sughra Begam v.
 - (1938) A I R 1938 Sind 132 (139) 176 Ind Cas 549, Takilram Tackchand v. Mt. Maral
 - (1929) A I R 1929 Sand 212 (215) 23 Sand L R 461 . 118 Ind Cas 207, Abdul Rahman v Hajs Mahomed Idres
 - (1921) A I R 1921 Sind 177 (180) . 16 Sind L R 25 60 Ind Cas 118, Mt Bhagbhars v. Mt. Khalun
 - (1913) 18 Ind Cas 358 (360) (Mad), Tajuddin v. Al. Ahmad
 - (1910) 5 1nd Cas 840 (841) (Lah), Kirpa v Jana.
- 12 (1921) A I R 1921 Cal 647 (652) 67 Ind Cas 31, Jagannath v Mt Chandra Bib: (Evidence to show adverse possession by one co-tenant must to much clearer than between strangers to the title)
 - (1924) A 1 R 1924 Oudh 266 (272) 78 Ind Cas 895 27 Oudh Cas 77, Indarpal v. Thakur Din
- 13. (1918) A 1 R 1918 P C 277 (279) (P C), Muttunayagam v. Margaret Brito (A 1 R 1914 P C 213 and (1855) 2 Kay & J 79, Followed)
 - (1928) A I R 1928 Lah 726 (735) 109 1nd Cas 26, Budhu Ram v. Uttamchand
 - (1915) A 1 R 1915 All 138 (139) 28 Ind Cas 276, Mallah v Behart.
 - (1936) A 1 R 1936 Cal 106 (110, 111) 161 1nd Cas 450, Nermal Chandra v. Mohitosh Das
 - (1931) A 1 R 1931 Lah S39 (341) 132 Ind Cas 177 12 Lah 101, Narsingh Das v Gohul Chand
 - (1920) 5 Lah L Jour 17 (18), Mangal Singh v. Malhan Singh
 - (1927) A 1 R 1927 Mad 111 (112) . 99 Ind Cas 158, Gorandasams v. Ecthandavant.
 - (1925) A I R 1925 Nag 145 (146) 82 Ind Cus 432, Kuterjee v Eama

Arts. 142 & 144 Note 35

by the latter.14 Thoro would, in such cases, be an occupation which would not he inconsistent with the other co-owners' possession.15 "It is important to bear in mind," observed their Lordships of the Privy Council in Hardit Singh v. Gurmukh Singh,16 "certain facts with regard to the possession of joint property which distinguish it from property separately held. In the former case the phrase 'exclusive possession' has an equivocal meaning; in the latter, it has not. If hy exclusive possession of a mint estate is meant that one member of a point family along occupies it, that by itself affords no ovidence of oxclusion of other interested members of the family. Uninterrupted sole occupation of such property without more must he referred to the lawful title possessed by the joint holder to use the joint estate and cannot be regarded as an assertion of a right to hold it as separate, so as to assert an adverse claim against other interested members. If possession may be either lawful or unlawful, in the absence of evidence it must be presumed to be the former."

An "ouster" may, in a proper case, be presumed where one co-owner has been in sole enjoyment of the property for a long

```
(1925) A I R 1925 Oudh 494 (495): 86 Ind Cas 321, Jagadamba Singh v.
Asmat Ullah Khan.
```

⁽¹⁹¹⁷⁾ A I R 1917 Pat 320 (321) · 39 Ind Cas 579, Mutsaddi v. Habib Mian, (1930) 125 Ind Cas 739 (739) (Cah, Kuda Koch v. Madan Gonal.

^{(1930) 125} Ind Cas 439 (439) (Cal), Ruaa Rock v. Madan Gopai. (1911) 12 Ind Cas 427 (428) (Lah), Gorind Sahai v. Thakardas.

^{(1921) 60} Ind Cas 293 (801) (Cal), Balaram Guria v. Shyama Charan

Mondal.

14. (1924) A I R 1924 All 719 (720): 79 Iud Cas 533, Lachman Pande v. Tribeni
Sahu. (Adverso possession—Mere non-payment of profits to a cosharee by lambardar 18 not ouster.)

^{(1901) 24} Mad 441 (449), Sellam v Chinnammal.

^{(1897) 21} Mad 153 (159) : 8 Mad L Jour 92, Ittappan v Manavikrama.

^{(1926) 51} Mad L Jour 72 (N R C.) (1936) A I R 1936 Nag 292 (283) 165 Jud Cas 934 : I L R (1937) Nag 242, Krishadas v. Partoatibas.

^{(1887) 2} C P L R 171 (171), Sheoba v Simaria.

⁽¹⁹²⁹⁾ A I R 1929 Cudh 402 (404) . 119 Iud Cas 866, Mubinulnissa v. Ali Hussain

⁽¹⁹²⁴⁾ A I R 1924 Ondh 266 (271) : 27 Oudh Cas 77 , 78 Ind Cas 895, Inderpal Singh v. Thakur Din Singh.

⁽¹⁹³⁶⁾ A 1 R 1936 Pat 136 (139) · 161 Ind Cas 331, Mt. Zamab v. Md. Ayub. (1926) A 1 R 1926 Pat 112 (116) ; 69 Ind Cas 913, Tilahdhari Lal v. Abdul

Wahab Khan, (1923) A 1 R 1923 Pat 103 (104) : 67 Ind Cas 795, Kuldip Singh v. Ram

⁽¹⁹²³⁾ A 1 R 1923 Pat 103 (104) : 67 Ind Cas 795, Kuldip Singh v. Har Setal Singh

⁽¹⁹³⁴⁾ A I R 1934 Pesh 7 (0): 148 Ind Cas 926, Mt. Yahut v. Inayatulla.

[.] Bashir Ahmed. . Yakub Bakhsh. v. Ganga Bakhsh. in v. Binda.

^{15 (1918)} A 1 R 1918 P C 339 (343), W P. Tamel v H. A. Anohamy. (Unsuccessful attempts to assert title are not enough.)

^{16. (1918)} A 1 R 1918 P C 1 (1, 2) · 1910 P R No. 64 : 47 1nd Cas 626 (P C).

time.17 In Varada Pillai v. Jeevarathnammal,18 their Lordships Arts, 142 & 144 of the Privy Council referred with approval to Culley v. Doe d. John Taylerson, 19 where it was held that where the claimant, tenantin-common, has not been in the participation of the rents and profits for a considerable length of time, and other circumstances concur, the Judge will direct the jury to take into consideration whether they will presume that there has been an ouster In Corea v. Appuhamy, 20 it was contended that the Court might presume from the long continued possession of one co-owner, an ouster of others. Their Lordships observed. "No doubt in former times, before the Statute of William IV, when the justice of the case seemed to require it, juries were sometimes directed that they might presume an ouster." Their Lordships did not, however, coosider it necessary to decide the question.

- 17. (1924) A I R 1924 All 920 (921); 79 Ind Cas 951, Basu v. Mt. Nanhi.
- (1929) A I R 1923 All 447 (448) 71 Ind Cas 653, Shakur v. Hussains Bibi. (1934) A I R 1934 Bom 273 (275) . 154 Ind Cas 824 58 Bom 410, Anant
- Ganpatı v. Vıshnu Rambhau. (1922) A I R 1922 Born 150 (151) 46 Born 213; 64 Ind Cas 205, Chand
 - Bhas v. Hasanbhas. (1921) A 1 R 1921 Bom 77 (78) 61 Ind Cas 552, Shiralineappa Satisfappa
 - v. Satyara Lazman (1903) 5 Bom L R 742 (744, 745), Bandacharya v. Srinivasacharya.
 - (1936) A I R 1936 Cal 195 (198) 162 Ind Cas 697. Chattagong Cotton Malla
 - y. Amar Krishna.
 - (1928) A I R 1928 Cal 396 (397) . 107 Ind Cas 741, Mahendra Nath v. Charu Chandra. (1925) A I R 1925 Cal 469 (470) 82 Ind Cas 822, Januatennesa v. Abdul
 - (1925) A 1 R 1925 Cal 1221 (1223); 87 1nd Cas 336, Hangesmar Eundu v.
 - Suryya Naram. (1922) A I R 1922 Cal 54 (55) 68 Ind Cas 200, Josepha Nath v Rasendra
 - (1918) A I R 1918 Cal 501 (502) 44 Ind Cas 216, Ahamuddin Tamsuddin v.
 - Amruddin. (1936) A 1 R 1936 Cal 106 (110): 40 Cal W N 777 (787) . 161 1nd Cas 450.
 - Nirmal Chandra v. Mohitosh Das. (1937) A 1 R 1937 Lah 890 (892): 175 Ind Cas 605: I L R (1938) Lah 867.
 - .1mar Singh v Ship Datt Kaur. (1917) A I R 1917 Lah 60 (63) 38 Ind Cas 120, Gullu v. Khuda Balsh
 - (1897) 21 Mad 153 (159) 8 Mad L Jour 92, Ittappan v. Manatthrama.
 - (1927) A I R 1927 Mad 170 (171) 98 Ind Cas 278, Marsammal . Augustine Rou
 - (1933) A I R 1933 Nag 340 (344) 29 Nag L R 350 149 Ind Cas 622, Mt. Mohankuar v Bhagatram.
 - (1929) A 1 R 1929 Pat 624 (626) 117 Ind Cas 636, Ramlahhan Singh v. Chathu Sahi.
 - (1920) A I R 1920 Pat 260 (262) 58 Ind Cas 731, Parma Pande v. Ram Sarup Pande
 - (1912) 17 Ind Cas 523 (524) (All), Deoksnandan v. Brudesu ara
 - (1912) 16 1nd Cas 342 (343) (All), Muhammad Ishaq v. Nathu (1911) 10 Ind Cas 554 (556) 5 Smd L R 49, Asudmal v. Ali
 - 18 (1919) A I R 1919 P C 44 (47) . 43 Mad 244 . 46 Ind App 285 53 Ind Cas 901 (PC),
 - 19. (1810) 9 L J Q B (x s) 288 (292) : 11 A A T 1008 . 3 PA D 539 52 R R 566. 20. (1914) A 1 R 1914 P C 213 (246) 1912 A C 180 61 L J P C 151 (P C).

Arts. 142 & 144 Note 35

As already stated, in order to constitute ouster, the denial of title must be to the knowledge of the other co.owner. I Such knowledge need not, however, he proved by direct evidence but may be inferred from the circumstances of the case. 22

A mere demand for partition by one co-owner and a refusal of such demand by the co-owner in possession will not amount to

- 21. (1937) A I R 1937 All 696 (698, 699) : 171 Ind Cas 910, Kishen Prasad v.
 - Mt Shubratan. (1934) A I R 1934 All 193 (195) : 150 Ind Cas 81 : 56 All 582, Fazal Husain
 - v. Mahomed Kazım. (1923) A IR 1923 All 291 (291): 71 Ind Cas 610, Hafis Abdullah v. Alli. (The possession of the mortgages, under a mortgage by two of the co-
 - (The possession of the mortgagee, under a mortgage by two of the cosharers does not amount to an ouster of the third and would not amount to adverse possession of the two co-sharers unless the thirdhas knowledge of the same)
- (1923) A I R 1923 All 447 (447) : 71 Ind Cas 653, Shakur v. Husanii Bibi. (1929) A I R 1929 Bom 323 (326) : 119 Ind Cas 779, Malhar, Vaman v.
- Vinayal Ravji. (1936) A I R 1936 Cal 34 (36): 160 Ind Cas 870, Mahendra Narayan v.
 - Dakshina Ranjan.
 (1933) A I R 1933 Cal 222 (292): 143 Ind Cas 179. Nandalal v. Pramatha
 - Nath.
 - (1930) A I R 1930 Cal 466 (468): 128 Ind Cas 103, Abdul Waheb v. Mohun Bashi Saha.
 - (1922) A I R 1922 Cal 54 (55, 56) · 68 Ind Cas 200, Jogendra Nath v. Rajendra Nath.
 - (1921) A I R 1921 Cal 647 (652): 67 Ind Cas 31, Jagannath Marwari v. Mt. Chandni Bibi.
 - (1916) A I R 1918 Cal 425 (426): 38 Ind Cas 187, Ketabai Sheikh v. Tola. Bibi
 - (1915) A I R 1915 Cal 594 (531): 27 Ind Cas 420, Surja Bibi v. Tarap Mondal.
 (1934) A I R 1934 Lah 456 (456): 15 Lah 907: 154 Ind Cas 983, Beli Ram
 - v. Munchi. (1932) A I R 1932 Lah 143 (144): 185 Ind Cas 686, Anant Ram v. Kishore
 - Chand (1930) A I R 1930 Lah 251 (252): 122 Ind Cas 105, Ghulam Muhammad v.
 - Mt. Begam. (1917) A I R 1917 Lah 372 (372): 39 Ind Cas 762, Umrao Singh v. Lachhmi
 - Narayan. (1897) 21 Mad 153 (166): 8 Mad L Jour 93, Ittappan v. Manarikrama.
 - (1936) A I R 1936 Nag 214 (215): 165 Ind Cas 177: I L R (1937) Nag 177, Khuaja Afrat v. Md. Saheb (1933) A I R 1933 Nag 340 (344): 29 Nag L R 350: 149 Ind Cas 622, Mt.
 - Mohankuar v. Bhagatram. (1936) A I R 1936 Pat 196 (189) : 161 Ind Cas 331, Mt. Bibi Zainab v.
 - Muhammad Ayub. (1923) A I R 1923 Oudh 61 (76) : 74 Ind Cus 225, Thalur Rudra Pratap
 - Naram v. Thakur Nirman Prasad. (But see (1933) A I R. 1933 Nag 27 (27, 28) . 28 Nag L. R. 282 : 140 Ind Cas 531, Murraduddin v. Mt. Umrach...)
- 22. (1930) A I R 1930 Cal 466 (468): 128 Ind Cas 103, Abdul Wahed v. Mohan Bashi Saha
 - (1926) A I R 1926 Cal 881 (882) 94 Ind Cas 33, Sabitri Dasi v. Nadir Chand. (1922) A I R 1932 Cal 54 (56): 68 Ind Cas 200, Jogendranath Mookerjee v.
 - Rajendranath Bhattacharjee. (1921) A I R 1921 Cal 647 (652): 67 Ind Cas 31, Jagannath Marwari v. Mt. Chandm Bhb.
 - (1915) A I R 1915 Cal 357 (358) : 27 Ind Cas 465, Lohenath Singh v. Dhwaleshwar.

"ouster." So also the mere fact that a co-owner sells a portion of Arts. 142 & 144 the joint property,24 or that the name of one of the co-owners alone is entered in the revenue papers, is not sufficient to constitute "ouster."25

Where the disputed parcels of land (which are the joint properties of the parties) do not form one property, the fact that the defendant has ousted the plaintiff as regards one of the parcels does not show that his possession of the other parcels was in assertion of an exclusive and hostile title.36

Where a person already in possession in assertion of a hostile title subsequently becomes a co-owner, his possession does not cease to be adverse where he continues to assert a hostile title and exercise exclusive possession.27

Where "ouster" is otherwise established, it is not affected by affirmations of right or applications for partition by the other co.owners.29 Even though "ouster" at any particular moment is not proved, it is open to the Courts to find that there has been ouster for the statutory period.29

The adverse possession of a co-owner may extend to a nortion only of the common property. 00

The onus of proving "ouster" is on the co-owner who alleges that there has been "ouster."31

(1928) A I R 1928 Mad 652 (654): 100 Ind Cas 553, Venhatachalam Chettiar v. Annapoorni Ammal

23. (1938) A I R 1938 Bom 250 (253) . 175 Ind Cas 434, Dattatraya Sitaram v. Shankar 24. (1935) A I R 1935 Cal 144 (145) . I54 Ind Cas 760, Bhaba Kanta v, Kerpas

Chutia (1920) 60 Ind Cos 298 (300) 24 Cal W N 1057 (1063), Balaram Gursa v.

Shuama Charan 25. (1922) A I R 1922 All 899 (899) . 64 Ind Cas 24, Deckmandan v. Zamir

Hussam Khan (1929) A I R 1929 Oudh 397 (340) : 115 Ind Cas 440, Bashir Ahmad v. Parshotam

(1929) A I R 1928 Rang 95 (95) . 104 Ind Cas 383, Mg Than Gyaung v. Ma Lun Baw.

(1929) A I R 1929 Sind 212 (215) 23 Sind L R 461 118 Ind Cas 207, Abdur Rahman v Haze Mahomed Idees

(1909) 9 Ind Cas 425 (426) (Oudh), Bharat Prasad v Ganga Bakhsh. 26. (1931) A I R 1931 All 193 (195) 191 Ind Cas 211, Shamun Ahmad v. Hesamul Haq

(1909) 1 Ind Cas 252 (253) (Cal), Narayan Chandra v Basanta Kumarı 27. (1924) A I R 1924 Cal 118 (122) 76 Ind Cas 511, Pankay Mohan Eas v. Benn Bekary

(1936) A I R 1936 Lab 994 (995) 167 Ind Cas 473, Ude Singh v Chittar. (1929) A I R 1929 Lah 524 (525) 117 Ind Cas 803, Bahawal v. Ghulam Mahomed

28, (1925) A I R 1925 Lah 183 (184) 78 Ind Cas 113, Hera Singh v Punjab

29 (1927) A I R 1927 Mad 595 (596) 102 Ind Cas 300, Venkata Eao v. Venhoba Row

30 (1924) A I R 1924 Mad 741 (747) 78 Ind Cas 37, Venhatarama Incr v Subramania Sastry

31, (1915) A I R 1915 All 30 (32) 26 Ind Cas 922 37 All 203, Ahmad Rara Khan v. Ram Lal.

Arts. 142 & 144 Note 35

Subject to the above principles the question whether there has

(1915) A I R 1915 All ISS (139) : 28 Ind Cas 276, Mallah v. Behars.

(1866) 1 Agra 162 (163), Barnee Sing v. Bhurth Singh.

(1866) 1 Agra 285 (285), Dabee Suhai v. Sheo Das Rai.

(1868) 3 Agra 241 (241), Mehtab Singh v. Purma.

(1929) A TR 1929 Bom 323 (326, 327): 119 Ind Cas 779, Malhari Vaman v. Vinayak Ravji.

(1929) A I R 1929 Bom 424 (429) : I21 Ind Cas 439, Mulj: Narotam v. Hiralal.

(1922) A I R 1922 Bom 94 (95): 67 Ind Cas 176, Vanayak Keshav v. Bala Shivram.

(1903) 5 Bom L R 742 (744). Bandacharva v. Shrinivasacharva.

(1907) 35 Cal 961 (970) : 6 Cal L. Jour 735 : 12 Cal W N 127, Jogendra Nath v. Baldeb Das.

v. Dattee Das. (1934) A I R 1934 Cal 644 (647, 648); 61 Cal 377; 151 Ind Cas 464, Jagadeshchandra Baner n v. Tayab Sardar.

desicionara Bauerji v. Taiyao Saraar. (1923) A I R 1923 Cal 356 (358): 76 Ind Cas 328, Dwarka Nath Sen v. Tarawasanno Sen.

(1877) 1 Cal L. R 155 (166), Rakhaldas Bundopadhya v. Indru Monee Debs. (1986) A I R 1936 Cal 106 (109): 40 Cal W N 777 (781): 161 Ind Cas 450, Nirmal Chandra Das v. Mohitosh Das.

(1869) 12 Suth W R 468 (468), Brojonath Paul v. Sreegopal Paul.

(1980) A I R 1930 Lah 251 (252): 122 Ind Cas 105, Ghulam Muhammad v. Mi. Degum.

(1930) A I R 1930 Lah 914 (915): 129 Ind Cas 609, Ram Chand v. Gopal Singh.

(1924) A I R 1924 Lah 682 (683) : 78 Ind Cas 159, Uds v. Maru Mal.

(1900) 1900 Pun Re No. 116, Khindad v. Alamgir.

(1906) 1906 Pun L R No. 39, Han v. Gohna

(1901) 24 Mad 441 (443), Sellam v. Chinnammal.

(1897) 21 Mad 153 (159) · 8 Mad L. Jour 92, Ittappan v. Manavikrama.

(1891) 14 Mad 96 (97), Alema v. Kutts.

(1929) A I R 1929 Mad 27 (29): 114 Ind Cas 837, Vanyapuri Chettiar v. Subramania Chettiar.

(1928) A I R 1928 Mad 652 (654): 100 Ind Cas 553, Venhatachalam Chettar v. Annapurni Ammal.

(1893) 3 Mad L Jour 100 (101), Rajyalakshmi v. Suryanarayana. (1927) 1927 Mad W N 696 (701), Arogaiswami v. Prakesi Ammal.

(1904) 1904 Pun L R No. 6, Asım v. Ghulam.

(1936) A I R 1936 Nag 214 (215) : 165 Ind Cas 177 : I L R (1936) Nag 177, Khwa ja Afzal v. Mahomed Saheb.

(1930) A I R 1930 Oudh 200 (201): 114 Ind Cas 497, Nur Ali v. Shaheadi.
(1927) A I R 1927 Oudh 6 (7). 93 Ind Cas 80, Mt. Sughra Begam v. Nur Ali.

(1926) A I R 1926 Oudh 141 (142): 72 Ind Cas 99, Mahipal Swigh v. Sarjoo Prasad.

(1924) A I R 1924 Oudh 266 (271, 272) : 27 Oudh Cas 77 : 78 Ind Cas 895, Indarpal Singh v. Thakur Din Singh.

(1914) A I R 1914 Oudh 228 (230) · 24 Ind Cas 633, Jagannath v. Kedar.

(1936) A I R 1936 Pat 136 (139): 161 Ind Cas 331, Mt. Zamab v. Muhammad Ayub.

(1920) A I R 1920 Pat 634 (635) · 55 Ind Cas 247, Radha Kanta Lal v. Bhagwat Prasad.

(1916) A IR 1916 Low Bur 77 (78): 32 Ind Cas 568, Ma Nyem Me v. Ma May.

(1933) A I R 1933 Sund 317 (820): 27 Sind L R 101: 150 Ind Cas 279, Mt. Shamul v Dot Mohamed Khan.
(1937) 167 Ind Cas 801 (801) (Nsg), Ramaja Gujar v. Kunwarjee Gujar.

(1926) 94 Ind Cas 855 (857) (Oudb), Ahmadullah v. Dashir Ahmad. (1911) 10 Ind Cas 551 (555, 556) : 5 Sind L R 49, Asudomal v. Ali. been an ouster by one co-owner of other co-owners is one of fact Arts. 142 & 144 depending upon the circumstances of each case 33

Note 35

Illustrative cases

- 1. A and B are co.owners of certain property A begins to collect the rents of the land to the exclusion of B on the ground of exclusive title His possession would be adverse to B.33
- 2 A. B and C are co-owners of certain property. C dies and his share devolves upon his widow D. A and B are in possession of the property and maintain D from out of her share. The possession of A and B is not adverse to D even though she is not paid the full share of the profits.31
- 3. A. B and C were members of a joint Hindu family. A, as manager, purchased certain property out of the joint family funds. Subsequent to the purchase. A applied to the Revenue authorities to include the name of a stranger to the family as the proprietor of a fourth share of the property. A died thereafter and X, who was then the sole surviving member of the family got into possession of all the property. It was held that assuming that the stranger was really entitled to a fourth share, he was in fact never in possession of the properties and that the possession of X was adverse to the stranger. 35
- 4. On a dispute between two brothers A and B as to the right to properties X and Y, one claiming exclusive right and the other a joint right in them, a compromise was effected between them by which property X was allotted to A and property Y allotted to B, and each party was from that date in exclusive enjoyment of the property allotted to him It was held that the possession
- (1911) 10 Ind Cas 575 (576) 35 Mad 618, Muthuraku Thevan v Robert Gordon Orr
 - (See (1939) A I R 1938 Lah 241 (241) I L R (1938) Lah 558, Karım Baklish v Shadi (Co-sharer in separate possession of common property dispossessed by another co-sharer-Plaintiff suing for possession-Suit comes under Article 112 and the onus is on the plaintiff to prove dispossession within 12 years of suit)]
- 32 (1928) A I R 1928 Cal 216 (217) 55 Cal 396 109 Ind Cas 747, Chandra Kishore v. Biseswar Pal
 - (1927) A I R 1927 Cal 462 (463, 464) IO1 Ind Cas 27, Nabadaup Chandra v. Dagaban Chandia
 - (1920) A I R 1920 Cal 473 (473) 47 Cal 274 56 lud Cas 141, Gorinda Chandra v Dina Nath.
 - (1918) A I R 1918 Cal 501 (502) 44 Ind Cas 216, Ahamuddin Tamijuddin v. Anuruddin
 - (1927) 107 Ind Cas 465 (466) 32 Cal W N 449 (451) . Asmana Ehatun v. Saburannessa Bibi
 - (1925) A I R 1925 Nag 145 (146) 82 Ind Cas 432, Kuterjee v. Rama. (1912) 14 Ind Cas 722 (723) (Cal), Ayennessa Bibs v Sheith Isuf
 - (1910) 6 Ind Cas 1009 (1009) (Lah), Fared-ud den v Als Hussans
- 83. (1916) A I R 1916 P C 96 (101) 43 Cal 660 83 Ind Cas 452 (P C), Nralyamons Dasa v Lalhan Chandra Sen
- 34 (1875) 23 Suth WR 214 (216) 15 Feng L R 10 2 Ind App 113 3 Suther 91 2 Sat 430 (P C), Aumstelall Boss v Rajoneckant Matter
- 35 (1886) 9 Mad 482 (491) 13 Ind App 147 10 Ind Jur 425 4 Sar 728 (P C), Ramalal shamma . Ramanna

Arts, 142 & 144 Note 35

of each of them of the property allotted to him would be adverse to the other from the date of the entry into possession under the arrangement.36

- 5. R and A. co-owners of certain property, executed an unregistered deed of gift of it to D, who was the daughter of R, in 1895. D entered into possession in 1895 and continued in possession. In 1901 R died and D became entitled to R's share of the property as her heir. More than twelvo years after the death of R. A's heirs sued D for possession alleging inter also that D's possession which began adversely to A ceased to he so when she became entitled to R's share and thus became a co-owner with A. The contention was overruled and it was held that the adverse possession of D having begun adversely against both the co-owners in their lifotimo, the character of the possession was not changed by her becoming entitled to a share on R's death. that the ouster continued after R's death, and that the possession of D was adverse throughout.³⁷
- 6. Two brothers constituting a point Hindu family senarated in 1865, but a particular property which had not been actually divided, was being emoved by one branch exclusively; they had the perception of the profits for more than the statutory period and in certain revenue proceedings as regards the portion of that property they had denied the title to such property of two other branches. From these circumstances their Lordships of the Privy Council came to the conclusion that there was an ouster of the other branches of the family.85
 - 7. A. one of several co-owners, usufructuarily mortgaged the property to X for purposes hinding on all the co-sharers, and admitted therein their title. It was beld that A could not be said to be in exclusive possession through the mortgages, but the possession of the mortgages must be taken to be on behalf of all the co-sharers.39

See also the undermentioned cases.40

- Sc. (1938) 174 Ind Cas 128 (129) (P C), Karunakar Tikait Samanta v. Purna Chandra.
- 87, (1919) AIR 1919 P C 44 (47] 48 Mad 244: 46 Ind App 285: 53 Ind Cas 901 (P C). Varada Pillas v. Jeesarathnammal.
- 38, (1931) A I R 1931 P C 48 (51) 130 Ind Cas 673 : 27 Nag L R 181 : 58 Ind
- App 106 (P C), Goundras v. Rajabai. 89. (1887) 1887 Bom P J 84. Hasan Abdula v Kasım Ahmad.
- (1895) 17 All 423 (424) 1895 All W N S8, Muhammad Husain v. Badri Prasad (The fact that the defendant has resisted a former sub for profits by the plantall and that the latter has not received any profits shows adverse possession.)
 - (1932) A I R 1932 All G1 (62) . 133 Ind Cas 899, Mul Chand v. Thakur Das. (Where an adoption by a Hindu widow has secretly taken place with-out the knowledge or assent of her deceased husband's brother who has remained in absolute and exclusive possession of the property, the adopted son cannot be said to be in constructive possession of the property in suit through the other party who will get a perfected title by adverse possession if he has remained in possession for more than 12 years from date of adoption]

Where there has been "ouster" of one co-owner by another, the Arts. 142 & 144 adverso possession of the former is not interrupted by the mere fact that a decree is passed in favour of the latter establishing his right

Note 35

- (1905) 1905 All W N 160 (161), Ram Sarup v Gulzar Banu. (Planting of grove on waste land by one of the co-sharers to the knowledge of other co sharers, does not mean an ouster of the latter by the former and hence there arises no cause of action under Art 142.)
- (1901) 25 Bom 362 (366) 3 Bom L R 47, Jagurandas v. Bas Amba, (In the case of a joint family consisting of three brothers, where no partition was proved, the mere fact that two of the brothers went to live in a neighbouring village would not make the possession of the third, who continued to live in the same village, necessarily adverse.)
- (1887) 11 Bom 365 (367), Dinkar Sadashiv v Bhilags Sadashiv, (Where
- (1924) A I R 1924 Cal 45 (46) 50 Cal 487 74 Ind Cas 193, Bhairabendra Cal 40
 - such possession not being referable to a lawful title
- (1937) A I R 1937 Lab 65 (67) : 171 Ind Cas 757, Narindar Nath v Jas Nath. (Suit by one cosharer for declaration that certain portion of joint property is exclusively his — No hostile overt act on his part before suit—Decree rejecting his claim but directing that property could not be partitioned until contribution by other cosharers to certain expenditure incurred by him - No mention of time limit-Exclusive possession by him for 12 years after decree - Possession held could not be adverse)
- (1934) A I R 1934 Lah 84 (84) 148 Ind Cas 918, June Ram v. Man Singh, (Where the co-sharer has built his residential house on the land, it amounts to an assertion of bostile and exclusive title to the knowledge
- of the other co sharers) (1932) A I R 1932 Lah 421 (422) : 139 Ind Cas 676, Mt. Rakht v. Mt. Khairan (Possession of bigger share by co-sharer and unsuccessful suit by him asserting that others are no co-sharers at all-Held in the circumstances of the case that these did not constitute adverse possession as regards the bigger share in his possession)
- (1929) A I R 1929 Lah 195 (198) 10 Lah 842 109 Ind Cas 658, Mt. Ahmad Bibs v. Shamas Dim. (Application to Municipality for permission to build a wall by a tenant-in-common does not amount to a denial of title of other co-heirs)
- (1927) A I R 1927 Lah 416 (417) 102 Ind Cas 9, Kunjial . Rampilal, (Individual proprietor cannot by planting trees on common land without consent of all, appropriate it to his use and claim adverse posses. sion - Held adverso possession started only when enclosure round these trees was constructed)
- (1922) A I R 1922 Lah 102 (103), Lala v Rhalas (Where an entry regarding a well in dispute in existence in 1957 clearly shows that one co owner and his descendants have been claiming to be not only in possession of this well, but in possession as sole owners and the position was made clear to the others in the course of a litigation in 1891, held the possession had been adverse at least since 1591 and that it had ripered into complete ownership 12 years later)
- (1917) A I R 1917 Lah 271 (272) 89 Ind cas 590, Ray Kaur v Tirath Fam. (A co-sharer's pos-ession becomes adverse when he retuilds a house making it publa)

Note 35

Arts. 142 & 154 as co. owner. 41 But where the decree is a consent decree, the possession of the co-owner who is in possession becomes admittedly one on behalf of all the co-owners.43

Where there is an "ouster" of one co-owner by another, the fact that the former's name is recorded in the revenue papers as co-sharer

- (1927) A I R 1927 Mad 111 (112) 99 Ind Cas 158. Govendaswami Chettrar v. Kolhandapans Chettar. (If in a joint property one co-owner absents himself for a number of years but his wife resides on the property, it as an evidence of non-exclusion of the absentee co-owner and the fact that the wife is entitled to the property also in another capacity makes no difference.)
- (1923) A I R 1923 Mad 153 (158) : 74 Ind Cas 27, Abnrakkar v. Kunhikuttiyoli. (Eldest male member of Thavazi being also Karnavan of Tarwad -Possession by him-Thavazhi not in adverse possession against tarwad.)
- (1921) A I R 1921 Mad 388 (390, 391) : 44 Mad 205 : 59 Ind Cas 464, Mecnalshs Achs v. Somasundaram Pellas. (Where the management of a charity is carried on by one of the members of a joint family for some time exclusively on account of his better business capacity or otherwise, it does not amount to an ouster of the other members from management entitling the member in possession to prescribe for the trusteeship.)
- (1938) A I R 1938 Nag 89 (90) : 178 Ind Cas 103, Ramgs v. Madhs. (A partition between co-owners in exclusive possession does not amount to custer or denial of title of the other co-owner not in possession.)
- (1936) A I R 1936 Nag 282 (283) : 165 Ind Cas 934, Mt. Krishnabas v. Paracats Bas. (One co-sharer in exclusive and long enjoyment of property—Other co-owners not participating in profits of property and not in the enjoyment of the property coupled with the fact that the co-sharer in possession sold the property as his own without protest from other co-sharers—Inference of ouster is justified)
- (1929) A I R 1929 Oudh 337 (840): 115 Ind Cas 440, Bashir Ahmad v. Parshotam. (The mere fact that a co-sharer brought a suit to eject a trespasser is no ovidence of denial of title of the other co-sharers and does not therefore amount to ouster)
- (1919) A I R 1919 Ondh 404 (405) : 53 Ind Cas 1005, Parmeshuar Din v. Ram Nath. (Refusal of Revenue Court to effect partition of joint khewat till determination of shares by Civil Court—Opposite party is not vested with adverse title)
- (1926) 94 Ind Cas 550 (551) (Lah), Karam Din v. Mehr Din (Where one of the heirs of a deceased person comes to occupy more than his share to the exclusion of the rightful heir of the excess share and alienates it and such alienation is accepted by the conduct of the latter, the possession of the former is adverse to the latter and ripens into ownership-
- if it extends beyond twelve years.)
 (1912) 13 Ind Cas 376 (377) (Cal), Nagendra Kumar Nath v. Hara Chandra Poddar. (Where one co-owner dealt with joint property as if it belonged exclusively to himself and alienated the whole of it to a part, and masn denial of the

1 interest were property.)

- (1911) 12 Ind Cas 425 (426) (Lah), Chiragh v. Mahamad Din (Where a co-sharer's name and after him his son's name is entered in the Revenue Register and no objection was raised by the actual holders, held, there was no abandonment and adverse possession merely by reason of the change of residence.)
- 41. (1914) A I R 1914 Lah 284 (286): 22 Ind Cas 805: 1914 Pun Re No 45, Albar v. Tabu.

will not prevent the running of limitation against him.43

Arts. 142 & 144. Notes 35 – 36

Where one co-owner leases his share to another, the original relationship of the parties as co-owners is revived on the termination of the lease and the possession of the quondam lessee is prima facts one on behalf of both the co-owners.

The principle that the possession of one co-owner is the possession of all does not apply where a stranger enters into possession claiming to be a fractional owner and his possession must be considered to be adverse to the real owner. 15

Where one co-owner acquires title by noverse possession to the share of the other also, an abandonment of possession by the former will not revive the title of the latter 45

A and B are two Hindu coparceners, A dies leaving C as his heir, B takes possession of the separate property of A. The possession of B is adverse to C, the heir of A, the reason heing that B and C are not co-owners with regard to the property.

See also the undermentioned cases 49

- 36. Possession of alience from co-owner. A co-owner may purport to alienate to a stranger
 - 1. his undivided share of the common property,
 - 2, the entire common property, or
 - 3, a specific item of the common property.

The purchaser in the first class may or may not be entitled to claim joint possession of the share purchased by him. In the case of an alienation by a coparcener of n joint Hindu family, for instance, the alience is not entitled to joint possession of the share purchased, with the other coparceners, but is only entitled to an equity to obtain a partition of the properties. In some Provinces the alienation

- 43. (1895) 17 All 423 (424) . 1895 All W N 88, Muhammad Husain v Badra Prasad.
 - (1924) A I R 1924 Lah 899 (391) · 71 Ind Cas 805, Muhammad Hassan v. Sohara.
 - (1914) A I R 1914 Lah 291 (295); 22 Ind Cas 805; 1914 Pun Re No 15, Abbar v Tabu.
- (1921) 63 Ind Cos 881 (882) (Lah), Hans Raj v. Maulu 44 (1931) A I R 1934 Bom 219 (220) 151 Ind Cas 1056, Dharma Raghunath v.
- Keshav Gunajec. 45, (1934) A I R 1931 Pat 485 (188) 151 Ind Cas 1032, Dharichhana Kuari v.
- Ramyad Kuar. 46. (1923) A I R 1923 Lah 862 (863) 76 Ind Cas 742, Daulat Ram v. Nanal.
- Chand
 47. (1919) A I R 1919 Oudh 151 (157) 50 Ind Cas 180. Ut Mahades Eunwar
 v Bahu Rans
- 43 (1926) A. I. R. 1926 Cal. 589 (590) 92 Ind Cas. 908, Sitesicar Roy v. Tepua. Barman. (Plaintiff esting out to prove actual joint possession and fuling to do so cannot subsequently rely on the principle that the possession of one co-owner is the possession of all the co-owners.)
 - (1931) A I R 1931 Lah 251 (1932) 134 Ind Cas 522, Sonu Malit v Bheri Malit. (1, B and C, three co-shares in a house—A in adverse powers son against O but not against B—C's share trundered to B—The adverse possession by I of such share ceases)

Arts. 142 & 144 . Note 36

is youd and the alieoce is oot entitled to the share at all, much less to the joint possession of such share. In cases in which he is entitled to joint possession, his possession of any portion of the property will not be adverse to the other co-owners. His possession will be that of a co-owner and is subject to all the rights and liabilities of a co-owner. "A person who takes a transfer from a co-tenant or a co-owner steps into the choes of his transferor. When be takes the assignment he is clothed with all the rights and becomes subject to all the liabilities of his transferor. Io short, be becomes as much a co-tenant or a co.owner as his transferor was before the transfer." It follows that the possession of the alience in eucli cases is not adverse to the other co-owners.2 unless it could be shown that there has been an ouster. A contrary view has, however, been held in the undermentioned cases,3 namely that the position of an alience is not the came as that of a co-owner and that his possession will become adverse from the date of his entry into possession. It is submitted that this view is not correct.

Where, in cases falling under the first class, the alience is not entitled to possession at all by virtue of his purchase, his possession of any portion of the joiot property cannot be referred to any lawful title to such possession and is consequently adverse to the co-owners

Note 36

 (1930) A I R 1930 Oudh 475 (477, 478) : 125 Ind Cas 883, Halim Shah v. Rahim Bux.

[See also (1935) A I R 1935 Mad 1059 (1061) : 159 Ind Cas 1021, Chenganakattil Moideen . Pottengal Kunhali Kutti.]

> r. Trikha. i 593 : 56 Cal

> > Venkatarama

(1930) 125 Ind Cas 739 (740) (Cal) Kuda Koch v. Madan Gopal Agarwalla.

(1927) A.I.R. 1927 Mad. 111 (112): 99 Ind Cas 158, Gesyndatanns v.
Kethandapans (Pro Hunda brothers—One becoming a Muhammyan and them alamatam bessels and the company of
S (1934) A I R 1934 Mad 183 (184): 149 Ind Cas 455, Palanuppa Chetty v.
Raman Chetty, (The observations were obster.)

(1920) A I R 1920 Mad 160 (160) . 54 Ind Cas 385, Sheikh Abdur Gafur v.

Athamath Bibs. (1926) A I R 1926 AR 697 (698): 96 Ind Cas 887, Sajjad Husain V. Qurban Ali Beg.

[See (1934) A I R. 1934 Cal 71 (73): 60 Cal 1212: 149 Ind Cas 111, Mons Mohan Palv. Gour Chandra Das. (Lesses of different shares under different co-owners in a Zamindari are not themselves co-owners.)] from the date of his entry into such possession.3a

Arts. 142 & 144 Note 36

In the second class, the alienation may or may not be valid as regards the share of the alienor. It is not valid as against the others. If it is valid as regards the alienor's share, and he is entitled to possession under such alienation, then his possession of any portion of the property must be referred to bis title and is not adverse to the other co-owners. The contrary view expressed in the undermentioned cases' does not seem to be correct. If the alienation is valid as regards the alienor's share but the alienee is not entitled to joint possession, his possession of any portion of the property will be without title and will be adverse to the co-owners.

In the third class, the possession of the altence will be clearly adverse to the other co-owners, whether the altenation is valid or not. The reason is that a co-owner of property is bimself not entitled, before partition, to any specific portion of the property, or to the possession of any such specific portion, and cannot convey to a stranger anything more than what he himself has. Consequently, the possession of the altence will be without title and will be consequently adverse to the persons entitled? The decision in the

- 8a (1934) A I R 1934 Pat 502 (503) : 150 Ind Cas 903, Rajunder Lall v Kuer Rai
- 4. (1912) 17 Ind Cas 657 (658) · 37 Bom 84, Malkappa v Mudkappa.
 - [See (1923) A I R 1923 All 291 (291); 71 Ind Cas 640, Hafiz Abdulla v. Alli.]
- (1930) A I R 1930 Lah 214 (215): 116 Ind Cas 890, Ibrahim v. Ali Muhammad.
 - (1981) A I R 1981 Mad 22 (23) 129 Ind Cas 454, Thiagaraja Pillas v. Apparoo Pillas
- 0 (1922) A I R 1922 Mad 860 (371) 70 Ind Cas 817, Langa Munisami Redds v Gotindasami Naisker (The decision is inconformity with principle, but the grounds of the decision are stated differently)
 - (1909) 1 Ind Cas 670 (674) (Cal), Banuare Lal v Sheo Sankar Messer.
 - (1936) A I R 1936 Lah 996 (998) 167 Ind Cas 918, Chhajumal v. Mullan Sungh
 - (1931) 1931 M W N S93 (891), Norayamanama Ayyar v. Thandan ta Iyer. (A and B coparcense.—A absenting property to C but continuing in possession as lessee of C to knowledge of B.—C must be held to be in adverse possession against B through A 1)
 [But see (1915) A I R 1915 Mad 447 (445) 29 Ind C 2s 573, Mathukrishnal fromer v Sankara Narayama Iwer
 - (1907) 2 Sind L R 43 (44, 45), Dhunoomal Chandiram v Mt Kaim Khalun, (1898) 23 Born 187 (142) (F B), Bhairao v Rakhmin
 - (1898) 23 Born 187 (142) (F B), Bhairao v Rakhmin (1922) A I R 1922 Lah 205 (207) 71 Ind Cas 171, Anwar v Eisken Singh
 - (1937) A 1 R 1937 Pesh 69 (70) 170 Ind Cas 195, Sher Mohamed Nauab Khan v Asmna Bibs
 - (1924) A I B 1924 All 788 (739) 80 Ind Cas 12, Baijnath v Bam Bilas.
 - (1932) A I B 1932 Bem 255 (255) 137 Ind Cas 867, Fahrappa v Rudrappa. (1902) 1902 Pun L R No 1 (page 3), Chint Ram v. Balktawar Rikk
 - (1889) 12 Mad 292 (293), Muttusamı v Ramalrıshna.
 - (1926) 51 Mad L Jour 83 (83) (N B C)
 - (1918) A I R 1918 Low Bur 119 (119) 42 Ind Cas 121, Illa Gyar v. Aung Pyu. (Article 112 will apply to the case—The case will be one of dispossession of the others)
 - (See also (1926) A I R 1926 Oudh 500 (501) 95 Ind Cas 433, Ram Udit v, Bhaguat Prasad]

Arts, 142 & 144 Notes 36-37

undermentioned case8 seems to proceed on the view that the possession of the alience of a specific portion of the joint property from a co-owner, will amount to an ouster of the other co-owners and that therefore the possession would be adverse.

Suppose now that the alience of a share of joint property from a co-owner does not obtain any possession, in a case in which he is entitled to be put in joint possession. It would follow from what has been stated above that the alience being a co.owner himself, the possession of the other co-owners of even the property alrenated would not be adverse to the alienec. The contrary view has, however, heen expressed in the case cited below, on the ground that the principle that the possession of a co-owner is not adverse to the others, is not applicable to the case of transferees from co-owners. It is submitted that this view is not correct on principle.

Where A is in possession of property belonging to himself and B iointly, but B. though not in possession actually, has not been proved to have been ousted by A. A's possession is not adverse to B and, if B alienates his share to C, is not adverse to C also 10 If the alience is, however, onsted from possession, the possession of the other co-owners will, of course, be adverse to the alience.11

A and B were co-owners of a property. A being entitled to three-fourths and B to one-fourth thereof. Subsequently, they ontered into an arrangement whereby each of them enjoyed a specific property as his share. B's one fourth share was then sold to O in execution of a decree against B C was obstructed in the delivery of possession and thereupon he sued B and A for possession. He however obtained a decree declaring that he was entitled to joint possession of one-fourth share in the entire property with A on the hasis that the partition arrangement was not hinding on him. B appealed from the decree and the same was confirmed in 1863 by the Appellate Court. A thereupon in 1873 sued C for his twelve annas share. It was held that the possession of C and B became adverse, if at all, only from the date of the appellate decree in 1863.12

37. Possession of licensee from co-owner. - The possession of a licensee from a co-owner is adverse to the other co-owner. But

S. (1936) A I R 1936 Pesh 24 (26): 160 Ind Cas 952, Jana Bahadur v. Abdul

9, (1924) A I R 1924 Lah 682 (683) : 78 Ind Cas 159, Udi v. Marumal. 10. (1934) A I R 1934 Bom 278 (275) : 58 Bom 410 : 154 Ind Cas 824, Anant

Ganpals v Vishnu Rambhau. (1916) A I R 1916 All 19 (21) · 36 Ind Cas 100, Ram Parson v. Kalab

Husain. (1899) 24 Bom 101 (111) · 1 Bom L R 466, Dhondo v. Vasudeo.

11. (1934) A I R. 1934 Bom 278 (275); 58 Bom 410; 154 Ind Cas 824, Anant Ganpate v. Vishnu Rambhau (Exclusive receipts of profits may

point to ouster) 12. (1879) 5 Cal G44 (653) : 7 Ind App 1 . 6 Cal L R 71 . 4 Sar 86 . 4 Ind Jour 142 : 3 Snther 697 : 3 Shome L R 157 (P C), Diwan Manwar Ali v. Annodaversad Ras.

Note 37

1. (1921) A I R 1924 Cal 693 (697) : 51 Cal 135 : 81 Ind Cas 493, Sailaja Nath Rau v Beshee Case Law.

the Oudh Chief Court has held a contrary view.2

Arts, 142 & 144 Notes 37-39

38. Effect of partition among co-owners. — Where, after partition has taken place, one co-owner is in possession of a portion allotted to another, such possession is prima facte adverse to the latter, the reason being that such possessum is not that of a co-owner.

Suppose A and B are co-nuners of certain property. A is in possession of the whole property adversely to B. Before the expiry of the statutory period, however, a partition is made between the parties. But A continues to be in possession of the whole property even after partition. Such possession is adverse to B as regards the portion allotted to him. But it has been held that the partition creates a fresh title in favour of B and that, hence, he is entitled to a fresh period of twelve years from the date of partition for bringing a suff top possession against A²

Where certain property belonging to a Hindu joint family is in the possession of one of the copareeners and such property is left undivided at a partition among them, the possession of the former continues to be that of a co-owner and is therefore not adverse.

39. Co-oweer deriving possession from a third party claiming adversely against all the co-owners.— Where a third party is in adverse possession against all the co-owners of a property and one of the co-owners then obtains possession of the property from such third party under a lease or other kind of transfer by him, the possession of such co-owner not being referable to his title

(IS9I) 1891 Bom P J 59, Baloji v. Maruts.

2 (1937) A I R 1937 Oudh 503 (505) 171 Ind Cas 89, Wajid Ali v Dr. Mohammad Nazivuddin Husaim.

Note 38

- 1 (1923) A I R 1923 Lab 362 (363) 76 Ind Cas 742, Daulat Ram v Nanal. Chand
 - (IS77) 1877 Bom P J 194, Derapa Mahabala v. Ganpaya Annaya.
 - (1886) 11 Bom 221 Note (b) 1883 Bom P J 262, Vithoba v. Narayan, (1904) 2 Ondh Cas 55 (61) Prog Dat v. Chote Sangh.
 - (1904) 9 Oudh Cas 55 (61) Prag Dat v Chote Singh. (1912) 13 Ind Cas 790 (790) 1911 Pun Re No. 81, Fatchdus v Nikka
 - (1930) A I R 1930 All 845 (846) 128 Ind Cas 820, Niranjan Singh v Mahabir Singh (Possession under the impression that it belongs to him is
 - adverse)
 (See (1928) 109 Ind C1s 456 (459) (Lah), Bhola v Sant Saran Singh
 (Possession not necessarily adverse))
- 2 (1920) A I R 1920 Oudh 223 (223) 57 Ind Cas 44S, Hanoman Singh v Ratau Suigh
- (1921) A I R 1921 Lah 83 (84) 67 Ind Cas 425, Muhammad Din v Mu-
 - (1887) 2 C P L R 116 (118), Dadu v. Raja.
- 3 (1924) A I R 1924 Mad 113 (114) 74 Ind Cas 1018, Rajagopala Iyengar v. Soundra Raja Iyengar
 - (1929) A I R 1929 Mad 27 (28) 114 Ind Cas 337, Varyapur: Chettiar v Subramanya Chettiar
 - (1917) A I R 1917 Pat 613 (614) 40 Ind Cus 115, Jagadamblal v Diku Lal.
 (1909) 1 Ind Cas 408 (411) 32 Mad 191, Vauhanatha Auger v. Avgasamy two.

as co-owner, is adverse to the other co-owners.1

Arts. 142 & 144 Notes 39-42

Where one co-owner, acting on his own hehalf and not on hehalf of all co-owners, recovers common property from a trespasser, the possession of such co-owner is adverse to the other co-owners.²

40. Adverse possession against alience of share in property.— A and B are co-owners of a certain property. A is in sole possession of the property on behalf of both the co-owners. B sells his share in the joint property to C. A continues to be in sole possession. A's possession is not adverse to C also, the reason being that C is a co-owner with him.

Where a person sells a *share* of his interest in a certain property and continues in possession of the whole property, such possession is not adverse to the alience.²

- 41. Adverse possession by co-owners against stranger.—
 Where the co-owners of a property encroach upon the adjacent
 property and such property is in the occupation of one or other of
 the co-owners continuously for the statutory period, such possession
 is on behalf of all the co-owners in a representative capacity and
 is not that of independent trespassers. Hence, at the end of the
 statutory period, the co-owners will acquire a title to the property.\(^1\)
- 42. Abandonment by co-owner. Where one co-owner ahandons his share of the joint property, the subsequent possession of the property by the other co-owner is on hehalf of himself alone and not on hehalf of hoth the co-owners.¹

Note 39

- 1. (1916) A I R 1916 Cal 59 (59): 35 Ind Cas 26, Biseswar Gangoely v. Bhaga-bats Charan.
 (1917) A I R 1917 Cal 315 (348): 35 Ind Cas 88, Jatindra Nath Roy v.
 - Sabidannessa Khatun.
 - (1934) A I R 1934 Cal 356 (963) . 60 Cal 1405: 149 Ind Cas 410, Subodh-chandra Nyapı v. Bhubatha Daze. (Stranger acquiring tille to Joint property by adverse possession Puchase from such stranger by one of the co-owners Possession of such co-owner is not one on behalf of the other co-owners.
 - (1921) A I R 1921 Cal 616 (617) . G4 Ind Cas 553, Bholanath Do v. Golabdi Sardar.
 - 2. (1921) A I R 1921 Lah 163 (164), Zulphi v. Asghar.

Note 4D

- (1929) A I R 1929 Cal 250 (252): 56 Cal 616: 117 Ind Cas 593, Biswanath Chahravarti v. Rabija Khatun.
 - (1928) A I R 1928 Iah 957 (958) : 120 Ind Cas 604, Fatch Muhammad v. Ghulam Muhammad.
 - (1916) A I R 1916 Mad 430 (432, 433) 29 Ind Cas 976, Hassan Annal Bibi
- 2. (1881) 3 Mad 212 (215), Kanara Pansker v. Rurappa Pansker,

(1933) A I R 1933 Lah 763 (763) : 148 Ind Cas 1112, Mam Raj v. Chhotu. Note 41

 (1931) A I R 1931 Lah 232 (233): 131 Ind Cas 341, Asimullah v. Ghulam Mohammad.

Note 42

 (1916) A I R 1916 Cal 99 (100) : 35 Ind Cas 72, Tomejuddi v. Mulai Choukidar.

43. Relinquishment by co-owner. - Where one co-owner Arts. 142 & 144. relinquishes his share of the property in favour of the other co-owners, but the deed of relinguishment is invalid for want of registration, the possession of the other co-owner is adverse to tho co-owner who has relinquished his share.1

Notes 43-44

44. Co-heirs. - The dectrine that the possession of one co-owner is prima facte not adverse to the other co-owners is applicable to co-heirs also 1 This principle applies also to the co-heirs of a Mahomedan 2 The contrary viow taken in the undermentioned

Note 43

1, (1917) A I R 1917 All 47 (48) . 42 Ind Cas 713 . 39 All 696, Jhamphu v. Kutramanı.

Note 44

- (1914) A I R 1914 P C 243 (245) (P C), Corea v. Appuhamy.
- (1890) 1890 Pun Re No 97, Lachhman Singh v. Sohan Singh.
- 2. (1931) A I R 1931 All 193 (194) . 131 Ind Cas 211. Shamon Ahmad v. Hesamul Hag.
 - (1924) A I R 1924 All 384 (386) 46 All 377 : 79 Ind Cas 174, Mubarak-an-
 - Nissa y Muhammad Raza Khan. (1919) A I R 1919 All 202 (203) 50 Ind Cas 691, Haider Khan v Chand
 - Rhan. (1916) A I R 1916 All 19 (20, 21) . 36 Ind Cas 100, Ram Parson Upadhia v.
 - Kalab Husain.
 - (1912) 15 Ind Cas 292 (293) (All), Chand Khan v Als Khan.
 - (1881) 1881 All W N 90 (90), Izaatunnissa v. Muhammad Taqi.
 - (1929) A I R 1929 Bom 141 (143) : 118 Ind Cas 785, Bas July . Bas Bibanboo. (1921) A I R 1921 Bom 56 (56) : 45 Bom 519 · 59 Ind Cas 780, Nurdin Najbuddin v Bu Umrav.
 - (1879) 1879 Bom P J 296, Imam Saheb v Sayad Harratsaheb.
 - (1926) A I R 1926 Cal 480 (480) 91 Ind Cas 725, Sourab Bibs v. Albas Als Bisuas
 - (1925) A I R 1925 Cal 1176 (1180) 85 Ind Cas 763, Astruddin Mondal v. Latsfunnessa Bibi
 - (1875) 24 Suth W R 1 (1), Moonshee Sudar v. Molungo Sirdar.
 - (1864) 1864 Suth W R 377 (377, 378), Backaram Chowdry v. Mahtab Beebee.
 - (1936) 170 Ind Cas 89 (90) (Lah), Jagan Nath v Begum Bibs.
 - (1931) 134 Ind Cas 491 (491) (Lah), Jalat Din v. Karam Nur. (1930) A I R 1930 Lah 251 (252) 122 Ind Cas 105, Ghulam Muhammad v.
 - Mt Begam. (1930) A I R 1930 Lah 78 (79) 119 Ind Cas 335, Mt Umat-Ul-Habibi v
 - Abdul Karım (1929) A 1 R 1929 Lah 464 (464) 10 Lah 849 118 Ind Cas 905, Muhammad
 - Bahsh v Fateh Mahammad. (1929) A I R 1929 Lah 195 (198) 10 Lah 842 192 Ind Cas 81, Ahmad Bibi
 - v. Shamas Din (1922) A I R 1922 Lah 193 (194) 77 Ind Cas 257, Hasham Ali v. Umar Hanat
 - (1921) A I R 1921 Lah 197 (198) 59 Ind Cas 346, Murad Bibs v. Rahim Bakhsh
 - (1925) A I R 1925 Mad 287 (287) 84 Ind Cas 896, Dada Sahib v. Azı Mohidin Saheb.
 - (1916) A I R 1916 Mad 1207 (1210) 29 Ind Cas 275, Mariam Dira Aminal v Khader Meera Sahib Taragan
 - (1910) 6 1nd Cas 579 (580) 34 Mad 74, Noonsleen Saib v Horahim Saib (1933) A I R 1933 Nag 27 (27) . 23 Nag L R 252 140 Ind Cas 531, Muraduddin v. Mt Umraobi.

Arts. 142 & 144 as co-owner, is adverse to the other co-owners.

Notes 39-42

Where one co-owner, acting on his own help

Where one co-owner, acting on his own behalf and not on behalf of all co-owners, recovers common property from a trespasser, the possession of such co-owner is adverse to the other co-owners.²

40. Adverse possession against alience of share in property. A and B are co-owners of a certain property. A is in sole possession the property on behalf of both the co-owners. B sells his share in the joint property to C. A continues to be in sole possession. A's possession is not adverse to C also, the reason being that C is a co-owner with him.\(^1

Where a person sells a *share* of his interest in a certain property and continues in possession of the whole property, such possession is not adverse to the alienee.²

- 41. Adverse possession by co-owners against stranger.—
 Where the co-owners of a property encroach upon the adjacent
 property and such property is in the occupation of one or other of
 the co-owners continuously for the statutory period, such possession
 is on beball of all the co-owners in a representative capacity and
 is not that of independent trespassers. Hence, at the end of the
 statutory period, the co-owners will acquire a title to the property.\footnote{1}
- 42. Abandonment by co-owner. Where one co-owner abandons his share of the joint property, the subsequent possession of the property by the other co-owner is on behalf of himself alone and not on behalf of both the co-owners i

Note 39

- 1. (1916) A I R 1916 Cal 59 (59) : 35 Ind Cas 26. Beseswar Gangooly v. Bhaga
 - bais Charan. (1917) A I R 1917 Cal 345 (348); 35 Ind Cas 36, Jaimara Nath Roy v. Sabidannessa Khatun.
 - (1934) A I R 1934 Cal 355 (863); co Cal 1406: 149 Ind Cas 410, Subodh-chandra Nyson, Nhubatika Dasze, (Stranger acquiring tuite to joint property by adverse possession Purchase from unch stranger by one of the co-owners Possession of such co-owner is not one on behalf of the other co-owners.
 - (1921) A I R 1921 Cal 616 (617): 64 Ind Cas 553, Bholanath De v. Golabdi Sardar.
 - 2. (1921) A I R 1921 Lah 163 (164), Zulphi v. Asahar.

Note 40

- 1. (1929) A I R 1929 Cal 250 (252) · 56 Cal 616 : 117 Ind Cas 593, Biswanath Chahravarts v Rabija Khatun.
- (1928) A I R 1928 Lah 957 (958): 120 Ind Cas CO4, Fatch Muhammad v. Ghulam Muhammad.
- (1916) A I R 1916 Mad 430 (432, 433); 29 Ind Cas 976, Hassan Ammal Bibs v Ismail Moedeen.
- 2 (1881) 8 Mad 212 (215), Kanara Paniker v. Ryrappa Paniker. (1933) A I R 1933 Lah 763 (763) · 148 Ind Cas 1112, Mam Raj v. Chhotu

Note 41

 (1931) A I R 1931 Lah 232 (233): 131 Ind Cas 341, Asimullah v. Ghulam Mohammad.

Note 42

 (1916) A I R 1916 Cal 99 (100) : 35 Ind Cas 72, Tomejuddi v. Mulai Chowkidar.

43. Relinquishment by co-owner. -- Where one co-owner Arts. 142 & 144 relinquishes his share of the property in favour of the other Notes 43-44 co-owners, but the deed of relinquishment is invalid for want of registration, the possession of the other co-owner is adverse to the co-owner who has relinquished his share.1

44. Co-heirs.—The doctrine that the possession of one co-owner is prima facie not adverse to the other co-owners is applicable to co heirs also 1 This principle applies also to the co-heirs of a Mahomedan.2 The contrary view taken in the undermentioned

Note 43

1. (1917) A I R 1917 All 47 (48) : 42 Ind Cas 713 : 39 All 696, Jhamphu v. Kutramanı.

Note 44

- 1. (1914) A I R 1914 P C 243 (245) (P C), Corea v. Appuhamy.
 - (1690) 1890 Pun Re No. 97, Lachhman Singh v. Sohan Singh.
- 2. (1931) A I R 1931 All 193 (194) . 131 Ind Cas 211. Shamin Ahmad v. Hesamul Hag.
 - (1924) A I R 1924 All 884 (386) 46 All 877 . 79 Ind Cap 174, Mabaral-un-
 - Nissa v Muhammad Raza Khan (1919) A I R 1919 All 202 (203) 50 Ind Cas 691, Harder Khan v Chand Khan
 - (1916) A I R 1916 All 19 (20, 21) 36 Ind Cas 100, Ram Parson Up tilhin v. Kalab Husain
 - (1912) 15 Ind Cas 292 (293) (All), Chand Khan v. Als Khan.
 - (1891) 1891 All W N 90 (90), Izaalunnissa v. Muhammad Taqi
 - (1929) A I R 1929 Bom 141 (148) . 118 Ind Cas 785, Bas Jees Bas Bibanboo. (1921) A I R 1921 Bom 56 (50) : 45 Bom 519 · 59 Ind Cas 780, Nurdin
 - Najbuddin v Bu Umrav. (1879) 1879 Bom P J 296, Imam Saheb v Sayad Hazratsaheb.
 - (1926) A I R 1926 Cal 480 (480) 91 Ind Cas 725, Sourab Bibs v. Ablas Ali Bisuas
 - (1925) A I R 1925 Cal 1176 (1180) 85 Ind Cas 763, Astruddin Mondal v. Latifunnessa Bibi
 - (1875) 24 Suth W R 1 (1), Moonshee Sudar v. Molungo Sirdar.
 - (1864) 1864 Suth W R 377 (377, 378), Bacharam Chowdry v. Mahtab Beebee
 - (1936) 170 Ind Cas 89 (90) (Lah), Jagan Nath v. Begum Bibs.
 - (1931) 134 Ind Cas 491 (491) (Lah), Jalal Din v Karam Nur.
 - (1530) A I R 1930 Lah 251 (252) 122 Ind Cas 105, Ghulam Muhammad v. Mt. Begam.
 - (1930) A I R 1930 Lah 78 (79) 119 Ind Cas 235, Mt Umat-Ut-Habibi v. Abdul Karım
 - (1929) A I R 1929 Lah 464 (464) 10 Lah 849 118 Ind Cas 905, Muhammad Baksh v Fatch Mahammad.
 - (1929) A I R 1929 Lah 195 (198) . 10 Lah 842 122 Ind Cas 81. Ahmad Bibi v Shamas Din (1922) A I R 1922 Lah 193 (194) . 77 Ind Cas 257, Hasham Ali v. Umar
 - (1921) A I R 1921 Lah 197 (198) 59 Ind Cas 346, Murad Bibi v Rahim
 - Bahhsh. (1925) A I R 1925 Mad 287 (287) . 84 Ind Cas 896, Dada Sahib v. Azı Mohidin Saheb.
 - (1916) A I R 1916 Mad 1207 (1210) 29 Ind Cas 275, Marsam Bit Ammal v Khader Meera Sahib Taragan
 - (1910) 6 1nd Cas 579 (590) 31 Mad 74, Noonsleen Saib v. Ibrahim Saib (1933) A I R 1933 Nag 27 (27) . 28 Nag L R 282 140 Ind Cas 831, Muradu. ddin v. Mt. U mrache.

...

Arts. 142 & 144 decisions is not correct.

45. Suit for possession by one co-owner against another

—Article applicable.—Where one co-owner has originally been in possession of the whole property on behalf of all the co-owners, but subsequently his possession has become adverse to the other co-owners, a suit by the latter for point possession or partition will fall under Article 144¹ (except where the ease falls under Article 127 supra).

(1929) A I R 1929 Oudh 521 (523) 121 Ind Cas 881: 4 Luck 261, Mohammad Ali v. Mumtaz Ali.

(1925) A I R 1925 Oodh 241 (242); 78 Ind Cas 282, Abdul Shahur Khan v. Muhammad Als Khan.

(1924) A I R 1994 Rang 155 (158): 1 Rang 405: 76 Ind Cas 855, Maung Po Kiu v. Maung Shre Bya. (1925) A I R 1925 Sud 201 (215): 78 Ind Cas 23: 18 Sing L R 149. Usman

(1925) A I R 1925 Sind 201 (215): 18 Ind Cas 23: 18 Sing L R 149, U sma v. Asal.

(1907) 1907 AU V N 195 (196): 4 AU L Jour 478, Chrinnfi Mal v. Nathia.
 (1927) A I R 1927 Lah 790 (790): 100 Ind Css 145, Mt. Allah Jawas v. Mahomed Bahsh.

(1923) A I R 1923 Lah 519 (520): 73 Ind Cas 425: 4 Lah 402, Mt. Zainab v. Ohulam Rasul.

(1888) 1888 Pun Re. No. 89, Nasir. Ud-dm Shah v. Mt. Lal Bibi.

(1936) A I R 1936 Rang 407 (411) : 166 Ind Cas 501, Mahomed Ameen v. Eusoof Hajee Ahmed.

Note 45

 (1932) A I R 1932 All 512 (519, 520) 54 All 910 148 Ind Cas 230, Shukrulia v. Mt. Zohra Bibi. (Suit for joint possession—Article applicable is Article 144.)

(1897) 21 Mad 153 (159): 8 Mad L Jour 92, Illappan v. Manavhrama. (Sult for recovery by partition of share in immovable property—Article applicable 1s Article 144 and not Article 142.)

(1928) A I R 1928 Lah 499 (502): 110 Ind Cas 18, Tava Singh v. Ram Saran. (Do)

(1920) A I R 1920 Mad 763 (770): 43 Mad 289: 59 Ind Cas 978, Venkatappanyya v Venkataranga Rao. (Do.)

(1936) A I R 1936 Pat 68 (69, 70) : 159 Ind Cas 453, Muhhram Rai v. Chandradeep Rat. (Do.)

(1916) A I R 1916 Mad 430 (432): 29 Ind Cas 976, Hassan Ammal Hibs v. Ismail Mouden Rosether. (Do) (1903) 5 Bom L. R. 742 (744), Bandacharya v. Shrimrasacharya. (Do.)

(1903) 5 Bom L R 42 (184), Bonaccharja v. Shrintasacharja, [Do.]
 (1913) 19 Ind Cas 411 (413, 414, 415): 1913 Pun Re No. 20, Basheshar Nath v. Devt Pershad. (Do.)

(1892) 1892 Bom P J, 202, Kusa v. Kesu (Do)

(1935) A I R 1935 All 774 (776) : 155 Ind Cas 824, Babos Singh v. Ram Manchar.

(1923) A I R 1923 Lah 519 (520): 73 Ind Cas 425: 4 Lah 402, Mt. Zamab v. Ghulam Rasul.

(1923) A I R 1923 Cal 356 (358) * 76 Ind Cas 328, Duarka Nath v. Tara-Prasanno (Common-vay-Distruction by one co-sharer-Suit by other for declaration and removal of obstruction is governed by Article 144.)

(1891) 14 Mad 96 (97). Alterna v. Kullt. (Defendant in possession on behalf of

(Do)
Lal v.

Notes 45-46

It has been held that where all the co-owners of a property have Arts, 142 & 144 been in joint possession but subsequently one of them is dispossessed or discontinues his possession, a suit by the latter for joint possession or partition will come under Article 142.2 The correctness of these decisions is doubtful in view of the fact that in such cases the possession of the defendant cannot be said to be adverse to the plaintiff from the moment of his entry. (See Note 2 supra.)

See also the undermentioned case 3

As to the limitation applicable to suits between co-heirs for share of inheritance, see Note 4 to Article 123, supra.

- 46. Adverse possession of trust property by trustee. -A trustee cannot, by setting up his own title to the trust property. acquire by adverse possession a title to the property. In Srinivasa-
 - 2 (1925) A I R 1925 Rang 233 (235) , 83 Ind Cas 609, Ma Nan Thu , Ma Shue Ma
 - (1934) A I R 1934 All 993 (1002) 57 All 278 · 152 Ind Cas 1 (FB), Bindhyachal Chand v. Ram Gharib Chand
 - (1938) A I R 1938 Lah 241 (241) I L R 1938 Lah 558, Karım Balhah v. Shadı (1006) 28 All 479 (480) 1006 All W N 95 3 All L Jour 834, Deba v Rohingh Mai (Property of tenants-in-common-One leaving posses-
 - sion and the other continuing in possession-Held that there is discontinuance of possession within Article 142.)
 - (1902) 5 Oudh Cas 6 (9), Jagdamba Baksh v Sitla Baksh. (1909) 4 Ind Cas 298 (299) 5 Low Bur Rul 112, Ma Lev. Ma Hingin, (Co-owners enjoying property by turns — Plaintiff not availing himself of his turn when it came — Plaintiff cannot be said to have discontinued possession within Article 142)

Note 46

- (1927) A I R 1927 P C 270 (272) 107 Ind Cas 344 (P C), Saumoun v. Disa Raphael
 - (1807) 19 All 277 (291) 24 1nd App 10 7 Sar 131 1 Gat W N 265 (P C), Bitto Kunuar v Kesho Prasad Misr
 - (1938) A I R 1938 Nag 335 (846) 177 Ind Cas 6 (F B), Asaram v Ludhe-
 - (1911) 11 Ind Cas 447 (448) : 34 Mad 257 38 Ind App 129 (P C), Srunt asn Murthy v Venhatatarada Inengar
 - (1868) 10 Suth W R 172 (172) . 1 Beng L R A C 114, Jagannath Pal v Bidyanand. (Before the Lamitation Act of 1871 any trustee could acquire the trust property by adverse possession)
 (1923) A 1 R 1923 Cal 1 (7) 50 Cal 49 74 Ind Cas 630, Charu Chandra
 - Nahush Chandra (Breach of trust for over 12 years-No prescriptive
 - (1848) 2 Deg & Sm 122 (163) 12 Jur 210 79 R R 151, litorney General v. Munro (Do)
 - (1872) 17 Suth W R 190 (191), Rance Khajoorunnissa v Mt Roheemonnissa. (An executor holding an estate in trust to pay the profits in certain defined shares to the hears of the testator, cannot plead adverse possession against them)
 - (1930) A I R 1930 Mad 563 (567) 125 Ind Cas 227, Kalatty Mudaly v. Mangapaths Mudals
 - (1935) A 1 R 1935 Mad 483 (485) 157 Ind Cas 181, Manuclammal v Muru-
 - (1914) A I R 1914 Mad 477 (479) 37 Mad 373 14 Ind Cas 169. Pattaikara Manakkal Kuppen v Munde Kettul (1877-78) 2 Bom 888 (413), Lallubhas Bapubhas v Mankusarbas
 - [See also (1865) 31 Per 576 (582, 5-3) 34 L J Ch 582 12 L T 587 : 11 Jur (x s) 649 13 W R 527 6 N R 243, Liver . Pict ford.

Note 46

Arts. 142 & 144 murthy v. Venkatavarada Iyengar,2 their Lordships of the Privv Council observed as follows:

".... No person who has accepted the position of a trustee and has acquired property in that capacity can be permitted to assert an adverse title on his own behalf until he has obtained a proper discharge from the trust with which he has clothed himself,"2a

In Bitto Kunwar v. Kesho Prasad,3 the Privy Council again expressed a similar view in the following passage:

"Their Lordships can only understand their (the High Court's) thinking thus hy supposing that they were of opinion that although there might be a trust. Bachcha Tewari and Ram Kishen (the trustees) might acquire a title by having possession of the property and appropriating it to their own use. The learned Judges appear not to have had in their minds the statement of the law in Sections 63 and 64 of the Indian Trusts Act. 1882."

The principle above stated, namely that a trustee cannot acquire title by adverse possession of the trust property, applies equally to quasi or constructive trustees,* to the managers of religious endowments and in fact to all persons who stand in a fiduciary relation to

(1861) 30 Beav 461 (470). 31 L J Ch 29 7 Jur (N 5) 1268 · 5 L T (N S) 570 : 10 W R 26 : 132 R R 363, Newsome v. Flowers.

(1884) 11 Cal 17 (30, 32), Hajon Manick v. Bur Sing]

2. (1911) 11 Ind Cas 447 (448) : 34 Mad 257 : 38 Ind App 129 (P C). 2a. See also (1929) A I R 1929 Cal 207 (208): 56 Cal 914: 119 Ind Cas 289, Gaya Prasad v. Bakya Mani Dassy.

(1920) A C 636 (653) : 39 L J P C 65: 123 L T 121, Taulor v. Danes.

3. (1897) 19 All 277 (291) : 24 Ind App 10 : 1 Cal W N 265 : 7 Ear 181 (P C). [See also (1911) 9 Ind Cas 540 (541) (Lah), Sohandan v. Aurang Khan.]

4. (1938) A I R 1938 Nag 835 (346) : 177 Ind Cas 6 (F B), Asaram v. Ludheshwar.

(1930) A I R 1930 Med 563 (565) : 125 Ind Cas 227, Ralatty Mudaly v. Mangapathy Mudals.

[See also (1914) A I R 1914 Lah 378 (379) ; 26 Ind Cas 345. Prem Singh v. Mokand Singh. (Religious endowment—Mahant's possession is not adverse to founder unless founder's title is repudiated-Founder's heir can oust trespasser in the absence of a mahant.)

(1869) 12 Suth W R 319 (319): 3 Beng L R A C 409, Rakhaldas Madak v. Madhusudhan Madak.

(1899) 21 All 829 (340) : 1899 All W N 106, Muhammad Munawar behalf of

sion is not d a refusal

(But see (1934) A I R 1934 All 990 (992), Ram Chandra v. Jaith Mal. (1924) A I R 1924 Oudh 321 (325) : 78 Ind Cas 359, Raunaq Ali v. Nazır Husain.]

 (1932) A I R 1932 Iah 603 (604): 133 Ind Cas 309, Lachhman Das v. Arya Prilinidhi Sabha. (A manager of a temple cannot convert himself into a full owner by treating the property as his own private property.)

Notes 46-49

others.6 In the case of express trustees it has been recognised in Arts. 142 & 144 Section 10 of the Act which provides that no suit against an express trustee or against his legal representatives or assigns (not being assigns for valuable consideration) for the purpose of following in his or their hands such property, shall be barred by any length of time.

- 47. Adverse possession of alience from trustee,-Section 10 of the Act does not apply to a suit against an assignee for considera. tion from a trustce, and hence, a suit for possession against a transferce for valuable consideration of the trust property from the trustee is governed by the ordinary period of limitation. In Subbaiya Pandaram v. Muhammad Mustafa,1 it was observed by their Lordships of the Privy Council that the exception (that is the exception from the operation of Section 10, of the case of assigns for valuable consideration) shows that in that event the claim may be defeated by adverse possession.
- 48. Adverse possession of right to perform worship in temple. - A right to perform a particular kind of worship in a Hindu temple as stapavanam, I e bathing the idol, offering nervedyam and deeparadhana, can be acquired by prescription

Where a right of worship is divisible, into separate parts, the acquisition of a prescriptive right to perform a minor worship will not carry with it the right to perform the major worship.1

49. Adverse possession of property of Hindu, Muhammadan or Buddhist religious endowments. - Religious institutions of Hindus, Muhammadans or Buddhists are recognised as juridical persons capable of holding property. It follows that they can also acquire property by the adverse possession2 and likewise lose property

(1927) A I R 1927 Mad 50 (52) 98 Ind Cas 442, Pratan Sunha v Sunja Raja Salub.

(1934) A I R 1934 Mad 391 (392, 883) 150 Ind Cas 156, Samt Augennar v. Venkataramana .tyyengar

(1935) A I R 1935 Nag 35 (42) 31 Nag L R 183 157 Ind Cas 17, Ram Suarcop v Thabur Ramchandra see Mandur

(1910) 8 Ind Cas 578 (590) (All), Falhruddin v Kifayatullah

6 (1921) A I R 1921 Pat 166 (170) 61 Ind Cas 807 6 Pat L Jour 273, Abdul Rahim v Mt Barira

(1933) A I R 1933 Cal 295 (303, 304) 60 Cal 54 144 Ind Cas 792, Suren-drakrishna Roy v Ishuar Bhubaneshuari Thakurani (There can be no adverse possession against an idol by the shebait, as he stands in a fiduciary relation to the idol)

Note 47

1, (1923) A I R 1923 P C 175 (178) 50 Ind App 295 46 Mad 751 74 Ind Cas 492 (P C).

Note 48

1, (1913) 18 Ind C1s 475 (476) (Mad). Inna lura: Gurulal v Ramaseamy Gurulal.

Note 49

- 1 (1914) A I R 1914 Oudh 255 (259, 261, 262) 24 Ind Cas 72, Situram is v Jadunath Singh
- 2 (1973) 4 I R 1923 Cil 142 (145) 50 Cil 292 74 Ind Cis 793, Anandachandra Chalarabarths v Bhojalal Singha

Arts. 142 & 144 Note 49

by the adverse possession of a stranger.³ As a material object or property, and not as an institution, a Hindu idol or a Muhammadan mosque can itself be acquired by adverse possession.⁴

It is, however, only in nn ideal sense that property can be said to belong to an institution as a juridical person. The possession and management must necessarily be entrusted to some person as its manager. As pointed out by their Lordships of the Privy Council in Prosonio Kuman Debay v. Golah Chand Baboa.

"...it is only in an ideal sense that property can be said to belong to an idel; the possession and management of it must, in the nature of things, be entrusted to some person as shebait or manager. It would seem to follow that the person so entrusted must, of necessity, be empowered to do whatever may be required for the service of the idel and for the benefit and preservation of its property at least to as great a degree as the manager of an infant heir."

But the person entrusted with the management of the property of an institution is only the manager and custodian of the institution.6 He is not a trustee in the strict sense of the term.7 But by S. 10 of the Act such manager is to be deemed to be a trustee As such, and even apart from it by virtue of his fiduciary position, such a manager cannot set up adverse possession with regard to the properties of the institution and acquire title to them on his own hehalf by prescription 6 For the same reason, no limitation will apply to a suit for possession of the endowed property against a gratuitous transferee thereof. But n suit against a transferee for valuable consideration will not be exempt from the bar of limitation as Section 10 does not upply to such cases. Such a transfer, however. nlthough made without legal necessity is not void ab initio in all cases. If the manager was not purporting to sell or transfer the property of the juridical person as manager but was purporting to make the transfer as owner in his own personal right, the transfer is

(1914) A I R 1914 Oudh 255 (262): 21 Ind Cas 72, Sitaramji v. Jadunath Suigh.

and the second of the first second of the second of

v. Benares nd defends lefender of e endowed

- 4. (1938) A I R 1938 Lah 369 (375) 175 Ind Cas 945 (FB), Massid Shahid
 - Ganj v S G P. Committee (1929) A I R 1929 All 315 (316): 51 All 621 . 116 Ind Cas 433, Dasami Sahu
- (1875) 2 Ind App 145 (152) 4 Beng L R 450. 23 Sath W R 253: 3 Suther 102 3 Sar 449 (PC), Prosumo Kumari Debya v. Golab Chand Baloo.
 - Balon.

 6. (1922) A I R 1922 P C 123 (126) 65 Ind Cas 161 : 48 Ind App 802 . 44 Mad 831 (PC), Valya Varulli, Turlhasscamigal v. Balusu anii Ayyar.
- 7. (1922) A I R 1922 P C 123 (126): 65 Ind Cas 161: 48 Ind App 302: 44 Mad 831 (PC), Vidya Varulki Thythassamıqal v. Balusuamı Ayyar,
- 8. See cases cited in Foot-Note (5) to Note 46.

v Param Shameshwar

Note 49

void ab initio and time will run against the institution even from Arts, 142 & 144 the date of the transfer.84 If however he purports to transfer the property as manager, the transfer is valid till it is set aside or till the death, resignation or removal of the transferor. Hence, the possession of the transferee, where the transfer is made without legal necessity, does not become adverso to the institution till tho death, resignation or removal of the transferor, and hence a suit for possession against him within twelve years of such death or resignation or removal will be in time. This principle is now specifically embodied in Article 134 B.10 But where the alienation is of the office of the manager, it is void ab anatio and the adverse possession of the transferee will begin as soon as he takes possession of the office and the endowed properties under the transfer. 11

Where a stranger gets into possession of the endowed property. his possession will be adverse to the institution from the date of the entry and the fact that the manager of the institution is succeeded by another will not give him a fresh starting point of limitation.12

8a (1938) A I R 1938 Mad 60 (63), Venkatasubramania v Silagurunatha. 9 (1935) A I R 1935 P C 44 (46) 153 Ind Cas I100 62 Ind App 47 57 All 159 (PC), Mahadeo Prasad Singh v Karia Bharti

Cas 214 60 Ind

App 802 44 Mad lusuams Ayyar. 249 452, Sarabdeo

Bharaths v. Ram Balt

(1913) 19 Ind Cas 558 (559) 37 Bom 224, Mahamadgaus Dadasaheb v Rajabaksha.

(1926) A I R 1926 Cal 913 (915) 95 Ind Cas 644, Raja Manundra Naram Roy v Executors, Bhuban Chandra Estate (1916) A I R 1916 Lah 239 (240) 32 Ind Cas 558, Facal Hahs v Zafar.11s.

(1933) A I R 1933 Lah 25 (27) 13 Lah 677 140 Ind Cas 601, Gurduara Parbandhal Committee v Premdas

(1923) A I R 1923 Mad 545 (550) 72 Ind Cas 789, Jagga Rou v Gars Bibs, (1926) A I R 1926 Mad 769 (770) 49 Mad 513 96 Ind Cas 371. Rama Reddy v Ranga Dasan

(1936) A I R 1936 Mad 262 (263) 162 Ind Cas 325, Veerana Goundan v Sellappa Goundan

(1930) A I R 1930 Mad 422 (424) 124 Ind Cas 155, Chidambara Su aprakasa Pandara Sannadhi Somasundaram Pillai

(1938) A I R 1938 Mad 60 (63), Tenkalasubramania V Sitagurunatha (1939) A I R 1939 Cal 21 (22), Charuchandra Nestya Gopal

(But see (1936) A I R 1926 Oudh 344 (447) 95 Ind Cas 27 2 Luck 239, Parkasdas v Janki Ballabha Saran (vo louger good law]]

10. Sec (1898) 20 All 482 (187) 1898 All W N 123 (F B). Behars Lat v Muhammad Muttahli (View that possession of the transferce is adverse from the date of the transfer is no longer good law)

11. (1899) 23 Mad 271 (279) 27 Ind App 69 4 Cal W N 329 10 Mad L Jour 29 2 Bom L R 597 7 Sar 671 (P C), Gnanasambanada Pandara Sannadhi v. Yelu Pandaram

(1910) 7 Ind Cas 240 (240) 37 Ind App 147 37 Cal 885 (P C), Damedar Das \ Lakhan Das

12 (1938) A 1 R 1938 Cal 81 (86) 176 Ind Cas 695, Panna Sundare v Lenares Bank Ltd (1912) 14 Ind Cas 142 (144) 39 Cal 557, Jharula Das : Jalandhar Thalur.

Arts. 142 & 144 Note 49

Where a stranger enters into possession of the endowed property claiming to be a manager thereof, his possession will not be adverse to the institution itself, but will be adverse against the trustee. The stranger will, after twelve years of such possession, acquire the right of a manager of the institution.³³

- (1900) 23 Mad 439 (441) : 9 Mad L Jour 8, Chidambaram Chetti v. Minam.
- (1907) 6 Cal L Jour 621 (636), Lilabats Misrain v. Brishun Chobey. (Adverse possession against female shebatt operates effectively as against the succeeding mile shebatt.)
- (1922) A I R 1922 Mad 406 (407): 70 Ind Cas 359, Madura Detasthanam v. Samia Pilla. (Metkavalgar in possession of manibham lands for 12 years after his dismissal from affice—Suit for possession by his successor is barred.)
- (1935) A T.R. 1938 Mad 449 (451), Rajagopala Naidu v. Ramasubramania Ayyar. (Nominee of villagers to manage village temple property dismissed and new one appointed—Suit by newly appointed nominee against the dismissed nominee for possession of temples and properties —Previous nominee setting up upght in limited (repudiating claim of villagers—Adverse possession of previous nominee starts from date of repudiation)
- (1923) Å I R 1923 Mad 545 (550): 72 Ind Cas 789, Jagga Row v. Gari Bibi. (1935) Å I R 1935 Mad 483 (486): 157 Ind Cas 181, Manickammal v. Murugappa Gramanı.
 - (1922) A I R 1922 Oudh 24 (25) : 66 Ind Cas 941, Abdur Rashid v. Janki
- (1933) A I R 1928 Rang 40 (40): 79 Ind Cas 278, U Wescilla v. U Parama.
 (1936) A I R 1936 Mad 188 (189): 161 Ind Cas 234, Jagathambal Anni v. Persathambi Nadar.
 - adverse possession) (1925) A I R 1925 Cal 140 (143): 84 Ind Cas 91: 51 Cal 959, Administrator
- General of Bengal v. Balkissen Misser. (1933) A I R 1933 Pat 6 (17): 141 Ind Cas 157: 11 Pat 701, Chaturbhuf
- Singh v. Sarada Charan Guha.
 (1926) A I R 1926 All 892 (393) · 48 All 818 : 93 Ind Cas 652. Chitar Mal v.
- Panchu Lal (1909) 3 Ind Cas 98 (99) (Cal), Ram Kisto Mohapatra v. Jagannath
- Mohapratu

 The institution cannot be regarded as a perpetual minor under disability;
 see: (1938) A I R 1938 Lah 369 (385); 175 Ind Cas 945 (F B), Masfid Sahid
 Ganj v. S. G. P. Committee
- (1932) A I R 1932 Mad 328 (333) : 137 Ind Cas 487, Periyanan Chelty v. Goinda Rao.
- (1930) A I R 1930 Cal 673 (676): 128 Ind Cas 195, Debendra Nath Sadhukhan v. Naharmal Jalan.

was adverse for more than 12 years)

App 204 : 53 Ind

chalam Chetty v. be office will not

however le adverse l

(1912) 16 Ind Cas 225 (232) (Mad), Veeraraghara Thathachariar v. Srinirasa Thathachariar. 50. Possession of co-trustees after division among them.— Arts. 142 & 144 The fact that joint shebaits of an institution divide the debutter property between them and apply the rents and profits thereof to their own use, will not make their possession adverse to the institution. The reasoo is, as has been seen in Notes 46 and 49 above, that a shebait stands in regard to the idol in a fiduciary relationship and will not be permitted to set np adverse possession against the institution.¹

- 51. Possession of alience from co-trustee. Where the management of a religious endowment is vested in two persons, and one of them alienates a part of the property of the endowment to a stranger, it has been held by the High Coart of Bombay that a suit by the other for the recovery of the property alienated is governed by Attocle 144, that time would run from the date of the alienator, and that the alienation cannot be considered to be valid for the lifetime of the transferror. Where one co-sbebait transferred certain property to a stranger, and the stranger purported to come in only as co-sharer of the other co-shebaits, the possession of such stranger is merely that of a co-oweer, and is not adverse to the others in the absence of proof of outster?
- 52. Acts referable to exercise of easement. It has been seen in Note 18 ante, that possession is never considered adverse if it can be referred to a lawful title. Acts, therefore, which can be referred to an easement right on the part of the person doing them, cannot be considered to be adverse to the true owner, and cannot constitute dispossession of the true owner, masmuch as a dispossession involves, occessarily, as seen in Note 9 ante, an adverse possession for the property as against the true owner. A was the owner of a party wall between the houses of A and B B had a right of easement of support for resting his rafters on the wall. In a suit for possession by A of the wall, B contended that A had been dispossessed by B more than 12 years before suit by reason of the

(1918) A I R 1918 Mad 183 (190) 44 Ind Cas 630, Raman Somayajipad v. Kunlin Kutti Kovilamma (Samudayi can acquire the rights of uralan (trustee) by prescription.)

(See also (1923) A I R 1928 Mad 327 (334) 51 Mad 720 103 Ind Cas 305, Chochalingam v Durausu anti The rights of a trustee can be acquired by pre-cribing for those rights i)

Note 50

 (1933) A I R 1933 Cal 295 (304) 60 Cal 54 144 Ind Cas 792, Surendra Krishna Roy v Ishuar Bhubaneshuari.

Note 51

 (1933) A I R 1933 Bom 26 (40) 141 Ind Cas 103, Narayan Balwant v Dattatroya Ramehandra, [See alvo (1852-84) 7 Mad 337 (338), Eannan v Nilalandan.]

2 (1935) A I R 1935 Cal 641 (643) 158 Ind Cas 656, Indian Iron & Steel Co. N. Bara Goral Thalar.

Note 52

1a.(1920) A I R 1920 Pat 38 (41): 57 Ind Cas 516, Pardig Singh v. Secretary of State Notes 52-52a

Arts. 142 & 144 fact that B had been plastering his side of the wall without interference by the plaintiff. It was held that the acts alleged to have been done hy B can be referred to his right of easement, that they were not adverse to the existing title and that they did not constitute any dispossession of A.1

> Whether the acts alleged are referable to the right of property or possession, or acts of mere right of easement independent of possession, will depend upon the facts and circumstances of the particular case.2 In Watson and Co. v. The Government,3 Sir Barnes Peacock, C. J., observed as follows:

"The exercise of such acts of nwnership of jungle lands as would ordinarily be exercised over property of that nature would be evidence of possession. For instance, if it were proved that the Ghatwals were in the habit of cutting or preserving the wood, gathering way or wild honey, collecting stick, lac, etc., (these) may all be evidence of acts of ownership or possession; and those who have to deal with the facts of the case must determine whether the acts were referable to the right of property or possession or acts of mere right of easement independent nf possession."

Where it was proved that the plaintiff and his ancestors had for many generations levied cesses and imposts, whenever they could, from the inhabitants of certain hills, exercised the right of hunting elephants and of cutting the adjoor tree, and exacted certain necasional services from the hillmen, it was held that there was nothing in those acts which could be evidence of any proprietary right in the soil of the hills, but that they were acts of mere right. of easement independent of possession.

52a. Adverse possession - Yendor and vendee. - Where a. person sells immovable property to another but continues in possession of the property, the vendor's possession is adverse against. the vendee from the date of the sale, though the vendee may not have paid the purchase-money.2

(1908) 31 Mad 529 (529): 4 Ind Cas 619. Sundrasastrial v. Govinda Manda—

2. (1867) e Suth W R 343 (350), The Gaternment v. Rajah Raj Kishen Singh. (1865) 3 Suth W R 73 (80) . Beng L R Supp Vol 182, R. Watson & Co. v. The Gavernment.

3 (1865) 3 Suth W R 73 (80) : Beng L R Supp Vol. 182.

4 (1867) 8 Suth W R 343 (350), The Government v. Razah Raz Kishen Singh. Note 52a

 (1899) 13 Born 424 (428), Sayad Nyamtulla v. Nana Fandsha. (11 Cal 229, Followed.

(1866) 1 Agra 110 (111), Unguee Lall v. Hoolasec. [See also (1886) 1696 All W N 96 (96), Kalu v. Kishore.

(1888) 1888 Bom P J 231, Rama v. Hajarimal.] 2. (1893) 1893 Bom P J 491, Ramji v. Vinayak.

(1910) 8 Ind Cus 365 (365): 34 Mad 513, Velayuda Chelly v. Got indasuami Naucker. (The vendes of unmovable property is entitled to possession of property when the conteguance has been duly effected even though the purchase money has not been paid to the vendor.)

In such a case, the remedy of the vendee is by a suit for possession Arts. 142 & 144. to which Art. 144 applies and not by a suit for specific performance of a contract to which Art. 113 will apply.3

Note 52a

Where at the date of the sale, the property is in the possession of a third party from whom the vendor subsequently obtains possession, the vendor must be deemed to be in adverse possession against the vendee only from the date when the vender cets possession ' (See Note 4 to Article 136 supra.)

A property in the possession of a usufructuary mortgagee is sold first to A and then to B. B (who is not entitled to the property) redeems the property and enters into possession of it. B's possession is adverse to A from the date of his entering into possession and he cannot be deemed to be in adverse possession from the date of the sale in his favour.5

Where property in the possession of a usufructuary mortgagee is sold, there can be no adverse possession by the vendor against the vendee till the mortgage is redeemed and possession obtained by the vendor.6

A sells a half portion of certain property to B but continues in possession of the whole property under a rent note for one year executed by B in respect of the half portion sold to him. A holds over after the expiry of the one year and sells the whole property to C. A's suit for joint possession against C is governed, not by Article 139 but by Article 144 The reason is that on the expiry of the lease, A becomes a co.owner in possession and so the suit against C who derives his right from A is one against a co-owner in possession and not against a tenant holding over?

A sells to B property P and delivers possession of the monenty to B. A then obtains from B possession of the property P giving B in exchange, property R. Subsequently, C obtains against B a decree establishing that A was not entitled to the property R and that bimself (C) was entitled to it. B then sues A for recovery of property P. B's right to sue accrues only from the date of the decree negativing A's right to property R and A's possession of the property P becomes adverse to B only from such date 8

A enters into a contract with B for the sale of certain property and delivers possession of the property to B in pursuance of such contract The sale, however, is not completed. B's possession under the contract for sale is only a provisional holding on the sufferance

^{3 (1911) 9} Ind Cas 238 (239) 1911 Pun Re No 18, Bhanjan Ram . Schaura. 4. (1898) 13 Bom 424 (428), Sayad Nyamtulla v. Nana Faridsha.

^{5. (1912) 14} Ind Cas 518 (515) (Lah), Mehan Lal v Bhagu Shah

^{6 (1887) 1887} All W N 103 (104), Berangs v Fam Saran 7. (1921) A I R 1921 Bom 462 (462) 60 Ind Cas 589, Ichalal Jagwohandas v. Nago Sina Patim

^{8. (1871) 16} Suth W R 270 (270), Kabul Krishna Dass v Mohessures De' 12.

Arts. 142 & 144 of A and not adverse to A.³
Notes 52a - 52b

See also the undermentioned decisions. 10

52b. Possession held under mistake, if can be adverse.—

to be his own and denying the title of B, the possession of A is adverse to B although A may be under an honest mistake and may not have any intention of depriving B of any property which may lawfully belong to him. Similarly, the fact that the true owner is under a mistake as to his rights and does not know that the property trespassed upon by another helongs to himself, will not make the possession of the trespasser other than adverse. Even where the mistake is shared by both the parties, possession held under a claim of right by a person who really has no right to the property will be adverse to the true owner.³

In some decisions, however, it has been held that where a person believes that he is entitled to a certain property, his possession cannot

- (1877) 1677 Bom P J 184, Varda v. Lakhma.
 (1929) A I R 1929 All 799 (800): 119 Ind Cas 110, Ram Dubey v. Har Naram.
- (Sale of property in possession of usufructuary mortgagee Vendee
 - (1936) A I R 1936 Mad 593 (600) . 167 Ind Cas 594, Krishna Kurup v. Rashukhath (Property of travad set apart for maintenance—Property in possession of tenant of tawashi—Sale by tamaxan of tawa —Tawashi still enjoying possession for over 20 years without interruption—Purchaser not taking possession—Possession of tawashi or tawashi or recovery from tawashi or
 - (1919) ATR 1919 Pat 447 (451, 452): 53 Ind Cas 114, Badri Ohaudhuri v. Harbans Jila. (Where the owner of property executed a fraudulent transfer with some ulterior motive but continued in possession of the property for more than 12 years, he is entitled not only to confirmation of possession but to recover possession if he subsequently loses it, even though the fraud intended to be effected was effected.)
 - 1 (1871) 12 Eq 149 (152) : 40 L J Ch 775, Williams v. Pott.
 - (1937) A I R 1937 Lah 811 (812): 177 Ind Cas 159, Amar Nath v. Ram Rakha.
 - (1918) A I R 1918 Nag 84 (85), Bhagwan v. Sadhuram.
 - (1930) A I R 1930 Mad 679 (692): 125 Ind Cas 545, Secretary of State v. District Board of Tangore.
 - (1925) A I R 1925 Rang 111 (111): 83 Ind Cas 132: 1 Rang 493, Ma Shan Ma v. Somasundaram Chetty.
 - 2. (1936) A I R 1936 Pat 179 (188, 184), 161 Ind Cas 855, Srish Chandru Nands
 - v. Roms Bachar Das.
 - (1920) A I R 1920 Mad 295 (302): 59 Ind Cas 689, Secretary of State v. Venkatanarasımla Naudu.
 - 3. (1918) 18 Ind Cas 869 (874) (Cal), Dwarla Nath Chowdhury v. Shasti Kinkar Bannergee. (A and B in joint possession of A's estate under

Arts, 142 & 144 Notes 52h - 53

be adverse because there is no intention to hold adversely to any one. Similarly, it has been held that possession by the defendant whose right is admitted by the plaintiff under a mistaken belief as to the rights of the parties cannot be adverse to the plaintiff. 4th It is submitted that the above two yiews are not correct.

In the undermentioned case, a partition took place among certain co-owners. But, owing to a mistake, each of the co-owners took possession of plots that were not allotted to him at the partition but to some other co-owner. Even after the mistake was discovered they continued to hold the same plots as before. It was held that the possession of none of the parties was adverse. The reason given was that in the circumstances of the case the possession of each of the parties must be held to be permissive, masmuch as it must be inferred that each of them intended to bold the plots in his posses. sion only so long as the plots to which he was entitled were retained by the other narty. It was also pointed out that none of the parties was entitled to the possession of the plots allotted to him at the partition until he was dispossessed of the plots which were in his possession, and so the principle that possession cannot be adverse to a person who has no present right to possession applied

A, a watandar in the Bombay Presidency, had two sons, B and C. B was born prior to the adoption of A, and C after his adoption. The law was that only the son born after the adoption was entitled to the watan monerty inherited in the adoptive family. But by mistake Callowed B (the son born before adoption) to share in the enjoyment of the property as a co-sharer The Bombay High Court, while conceding that the possession taken by a stranger under a mistake common to all the parties can be adverse, held that in the peculiar circumstances of the case, the possession of B must be held to be nermissive and not adverse to C 6 See also the undermentioned case? for a similar decision.

53. Possession of wrongdoer must be actual. - In order to sustain a claim to land by limitation there must be actual possession of a person claiming as of right by lumself or by persons deriving title from him. A mero intention to possess is not sufficient. There

```
4 (1937) A I R 1937 Sind 78 (80) 157 Ind Cas 283, Mt Sitabas v Jumo
4a (1921) A I R 1921 Lah 175 (175), Indar Singh : Bahshisha
```

W. N Hear.

mt to

act of physical posession) (1927) A I R 1927 Oudh I II (142) 1 Luck 441 98 Ind Cas 701 29 Oulh Cts 995, Raryos Sunda V Sula Nath 2 (1935) A I R 1938 Cal 700 (762) 159 Ind Cas 752, Fhabans I results a Labira

Manudra Chandra Ros

^{5 (1922)} A I R 1922 Oudh 152 (156) 66 Ind Cas 461, Magbul Ahmad v Fachat

^{6 (1929)} A I R 1928 Bom 287 (288) . 110 Ind Cas 303, Keshav Baghmath v. Goriad

^{7. (1921)} A I R 1921 Lah 175 (175), Indar Singh v. Bal shisha Note 53

. ...

rts. 142 & 144 Notes 53–54

must be both absence of possession by the person who has the right and actual possession by another to bring the case within the Statute.³ A trespasser's adverse possession will therefore be confined to the area actually occupied by bim. In Nageswar Bux v. Bengal Coal Co., their Lordships of the Privy Council observed as follows:

"Now there is undoubted authority for the proposition that when a person without any colour of right wrongfully takes possession as a trespasser of the property of another, any title which he may acquire by adverse possession will he strictly limited to what be has actually so possessed. The maxim tantum prescriptum quantum passessum is rigorously applied to him."

Where the defendant is in possession of some land, but it is not identified with the laud in dispute in the suit, a plea of limitation by adverse possession must be rejected.³

Neither proof of title uor au adjudication on the question of title is proof of actual possession.⁶

The theory of constructive possession applies only to the rightful owner and not to a trespasser, and he cannot acquire any title by prescription on the ground of any such possession.

54. Adverse possession of surface and of sub-soil rights in the land.—Where a person is in adverse possession of land, normally he will acquire not only a title to the surface but also to the sub-soil.¹ It has, however, heen held by the Privy Council that where a Zamindar in India makes a grant of a permanent tenure to another, the presumption is that only surface rights are thereby granted and that the Zamindar remains in the eye of the law in constructive

1.6 Cal W N

4, (1931) A I R 1931 P C 186 (188): 10 Pat 407: 58 Ind App 20: 130 Ind Cas 315 (P C).

(1926) A I R 1926 Pat 385 (391) : 96 Ind Cas 1027, Keshabja v. Shass Bhusan.

 (1932) A I R 1932 P C 126 (123): 136 Ind Cas 625 (P C), Shama Kant Lal v. Rambhan Puri.

6. (1928) A I R 1929 Nag 294 (296) : 111 Ind Cas 662 : 21 Nag L R 148 : 29 Cri L Jour 902, Shriram v. Samirmal.

 (1935) A I R 1935 Cal 760 (762): 159 Ind Cas 752, Bhabans Prosanna v. Manindra Chandra.

(1935) A I R 1935 Pat 254 (256) : 155 Ind Cas 122, Mt. Krishna Kuer v. Secretary of State.

8. (1913) 20 Ind Cas 821 (823) (Cal), Budhu Kumar v. Hafis Husain.

(1915) A I R 1915 Cal 464 (473) · 29 Ind Cas 156, America Sundars Devs v. Serasuddin Ahmed.

Note 54

 (1901) 1 Ch 738 (744): 49 W R (Eng) 474: 70 L J Ch 411: 84 L T 225, Mulland Radicay Co. v. Wright. possession of the sub-soil.2 Evidence of long possession of the surface Arts, 142 & 144 by the tenure bolder in such cases is not evidence of adverse possession of the sub-soil.3

Note 54

As to adverse possession of the sub-soil, it is a well recognised principle that there can be separate ownership of different strata of the sub-soil, at all events, where minerals are involved, and that the adverse possession of one strata is not necessarily adverse possession of another strata. In Low Moor Co. v. Stanley Coal Company.5 Lord Carris observed .

"It is true that in cases where a man bas entered upon and taken possession of one seam of coal, and by lanse of time has acquired some title to it, the law will not assume that his possession extends to other seams of coal lying under that particular line."

There is no presumption in law that the possession of a part of a seam infers possession of the whole seam, much less the seams in the mineral field in which part of a seam has been worked. The principle underlying the propositions stated above is that title by adverse possession can be acquired only to that area of which actual possession has been enjoyed 7

In considering the character and effect of acts of possession in the case of mineral fields, it is, however, necessary to bear in mind the nature of the subject and the possession of which it is susceptible. Owing to the maccessibility of minerals in the earth, it is not possible to take actual physical possession at once of a whole mineral field. it can be occupied only by extracting the minerals and until the whole minerals are exhausted the physical occupation must necessarrly he nartial 8 It 14, however, necessary that the working of the minerals should be so general as to indicate that the defendant had taken possession of the whole mineral field sa The removal of a small quantity of mineral from here and there will not be sufficient 8b But

- (1931) A I R 1991 P C 83 (89) 58 Ind App 125 58 Cai 1187 131 Ind Cas
 (PC), Gobinda Narayan Singh v Sham Lal Singh
 - (1931) A I R 1931 P C 162 (164) 132 Ind Cas 610 58 Ind App 228 59 Cal 80 (P C), Bhupendra Narayan v. Rajesuar Prosad
- 3, (1931) A I R 1931 P C 89 (94) 131 Ind Cas 753 58 Ind App 125 58 Cal 1187 (P C), Gobinda Narayan Singh v Sham Lal Singh
- 4 (1931) A I R 1931 P C 162 (164) 132 1nd Cas 610 58 Ind App 228 59 Cal 80 (PC), Bhupendra Narayan . Rajesuar Prosad
- 5 (1876) 34 L T (N S) 186
- 6. (1931) A 1 R 1931 P C 186 (185) 10 Pat 407 58 Ind App 29 130 Ind Cas 315 (P C), Nageshuar Bux Roy v Bengal Coal Co Ltd.
- (1931) A I R 1931 P C 185 (189) 130 Ind Cas 315 59 Ind App 29 10 Pat 407 (P C), Nageshuar Bux Roy v Bengal Coal Ca, Ltd. See also Note 7 aute.
- 8. (1931) A I R 1931 P C 186 (188) 190 Ind Cus 315 58 Ind App 29 . 10 Pat 407 (P C), Nageshuar Bux Poy v Bengal Coal Co Ltd
- 81 (1935) A I R 1935 Pat 38 (36) 13 Pat 517 156 Ind Cas 136, Multaleshi Patrans v Midnapore Zamindary Co Ltd.
- 8b (1935) A I R 1935 Pat 33 (36) 13 Pat 517 156 Ind Cas 136, Multalesh, Patrani v Midnayore Tamindary Co Ltd

Arts. 142 & 144 Notes 54-56

where the defendants wrongdoers, in assertion of their right to the minerals under a particular area of land, sank three pits at different points, two of these being half a mile distant from the third, selecting the places at their own discretion, brought plants on the land and erected bungalows for employees, it was held by their Lordships of the Privy Council that adverse possession of the whole mineral field under the area was established. Their Lordships observed:

"It is nothing to the purpose that the Company may not have worked any one pit for twelve years continuously, if for twelve years they have carried on operations in various parts of the mineral field. The fact that one pit in a mineral field is discontinued and another opened in a different part of the field, and that bores are sunk in likely places, is excellent proof of possession of the whole area."

55. Possession of person who could not advance a hostile title.—It has been seen in Noto 16 ante, that adverse possession necessarily implies a possession in denial of the title of the true owner. It follows that where the wrongdeer is not permitted by law to advance any hostile title to the true owner, his possession cannot be adverse to the true owner. It is a general principle of law, as has been seen in Note 18 ante, that a person whose possession can be referred to a lawful title will not be permitted to show that his possession was hostile to another title, and that his possession will not therefore be adverse to the person in whom such other title is vested. It is on this principle that the possession of one co-owner is not adverse to the other co-owners (see Note 35), and the possession of a trustee is not adverse to the cestni que trust (see Note 46). Soc also Notes 80 and 81 infra.

55. Permissive possession.—A permissive possession is not one in denial of the title of the true owner and is consequently not adverse to the true owner. It will not enable the possessor to obtain a title by adverse possession 1 The mere fact that the document

9. (1931) A I R 1931 P C 186 (188, 189) : 130 Ind Cas 815 . 58 Ind App 29 : 10 Pat 407 (P C), Nageshwar Bux Roy v. Bengal Coal Co. Ltd.

Note 55

(1938) A I R 1938 Nag 335 (347): 177 Ind Cas 6 (F B), Asaram v. Ludhe-shwar.

Note 55

1 (1934) A TR 1934 P C 67 (68) . 12 Rang 238 : 147 Ind Cas 328 (P C). Lim Charlie v. Official Receiver.

(1934) A I R 1934 P C 77 (81) - 147 Ind Cas 887 : 61 Ind App 50 : 56 All

2 : 80 Ind Cas

513 : 2 Cal L ar 788 (P C),

(1933) A I R 1933 Cal 102 (103) : 140 Ind Cas 799, Zamuddin Hussain v. Md. Abdur Rahim.

(1936) A I R 1936 Lab 673 (674) . 160 Ind Cas 1933, Mohammad Yahub v.

granting the permission is not valid, will not make the possession Arts. 142 & 14 other than permissive.3

Note 56

Possession is, however, prima facte adverse,3 and therefore the burden of proving permissive possession is upon the party alleging the same.4 It is not necessary that the permission should be express. It may be implied from the facts and circumstances of the case.

- (1926) A 1 R 1926 Oudh 353 (355) . 91 Ind Cas 779. Ahmad Shareff v. Umrao Beg (Defendant proved to be in permissive possession. Plaintiff entitled to possession though he failed to establish the contract of
- tenancy set up by him) (1913) 18 Ind Cas 367 (368) (Oudb), Nands v. Bagar Hussam, (Possession of a Muhammadan widow under an arrangement-Held permissive)

(1892-96) 2 Upp Bur Rul 363 (364), Maung Lin v. Maung Shine Thaw (1898) 1898 Bom P J 36, Gurangauda v. Basata.

- (1930) A I R 1930 Bom 84 (95) . 53 Bom 792 123 Ind Cas 481, Gugrat Gunning and Manufacturing Co v. Motilal Hirabhai Spinning & Wearing Co. (Agent of plaintiff permitting defendant to build upon plaintiff's site)
- (1929) A I R 1929 All 808 (908,809) : 118 Ind Cas 709, Mt. Ajasb v. Noor Khan.
- (1915) A I R 1915 All 87 (87) 28 Ind Cas 622, Bachcha v Shiam Lal. (Plucing tama in a particular land by consent)
- , (1933) A I R 1933 Cal 539 (541) 146 Ind Cas 427, Brajendra Kishore v. Isuar Kasbarta
 - (1930) A I R 1930 Cal 556 (557) 128 Ind Cas 244, Jadav Chandra v Akrur Chandra
 - (1915) A I R 1915 Nag 29 (32): 31 Ind Cas 471 . 12 Nag L R 75, Narsing Das v. Ratanial.
 - (1920) A I R 1920 Oudb 30 (30) . 54 Ind Cas 261, Rameshwar Baksh Singh v Dicarka. (The fact that the licensee has improved buildings on the land or has replaced erections would not confer such a title upon him.)
 - (1927) A I R 1927 Oudh 206 (207) . 102 Ind Cas 26, Thakur Praind v. Thomkinson
 - (1890) 3 C P L R 160 (160), Durga Patel v Atmaram Pouar
 - (1936) A I R 1936 Pesh 217 (229) 163 Ind Cas 230, Sujan Singh v. Secretary of State
 - (1570) 13 Suth W R 344 (344) 5 Beng L R App 12, Askar v Bam Manick
 - (1915) A I R 1915 Nag 119 (121) 11 Nag L R 126 31 Ind Cas 307, Naram v Bihari.
- 2. (1925) A I R 1925 Mad 1279 (1280) 91 Ind Cas 565, Ramanujacharyulu v. Mangarac.
- 8 (1913) 21 Ind Cas 765 (767) (Mad), Rompicherla v Shail Ismail Sahib. (1912) 15 Ind Cas 146 (151) (Mad), Ambalasana Chetty v. Singaraselu
- Odayar. (1932) A I R 1932 Oudh 135 (196) 135 Ind Cas 689, Indar Gir v Special
 - Manager, Court of Wards, Balrampur Estate.
 (1928) A I R 1928 Lah 959 (959) 113 Ind Cas 145, Mamman v. Kallumal.
- 4. (1920) A I R 1920 Lab 475 (475), Mir Mahfuz Ali . Ut. Mahomed Zamani
 - (1911) 11 Ind Cas 777 (777) (Low Bur), Ma Myst v. U Chaing
 - (1929) A 1 R 1929 Rang 153 (154) 7 Rang 85 117 Ind Cas 591, U Maun > Gus \ Maung On Burn
 - (1887) 11 Bom 221 (221) (Note b), Vithoba v. Narayan
 - (1900) 2 Bom L R 410 (411), Basapa v. Basapa (Possesson is evidence of title, and is primarily exclusive it is for him who impages the exclusive title to show that the possision originated in some way which has preserved his own right)
 - (1933) A 1 R 1933 Nag 112 (113, 114) 29 Nag L R 42 144 1nd Cas 696, Jai Krishna v Babu.

Note 56

Arts. 142 & 144 Thus, a tenant of a Zamindar occupying adjoining vacant land of the Zamindar for purposes ancillary to agriculture will be deemed to be in such occupation with the implied permission of the Zamindar.5 The question whether a possession is permissive or otherwise is one of fact depending upon the circumstances of the particular case.6

Where possession is proved to be in its origin permissive, it will be presumed that it continued to be of the same character until and unless something occurred to make it adverse.7 The onus is on the permissive occupant to show when and how his possession became adverse.8 In order to discharge this there must be clear and affirmative evidence to establish the change in the character of possession. There must be an open and explicit disavowal and disclaimer brought

```
(1929) A I R 1929 Rang 170 (171): 120 Ind Cas 662, Maung Ba Than v.
     Maung Sein Win.
```

See also Note & infra.

5. (1923) A I R 1923 All 140 (140) : 44 All 726 : 77 Ind Cas 140, Bhoj Raj v. Har Dera.

> [See also (1917) A I R 1917 All 182 (183) 41 Ind Cas 613, Puttu Mal v. Bharat Indu.

> (1915) A I R 1915 All 312 (312) : 29 Ind Cas 264, Padarath Tewari v. Baz Singh.

(1930) A I R 1930 Lah 384 (385): 120 Ind Cas 602, Sundar Das v. Md. Akram Khan.1

6. (1922) A I R 1922 Oudh 152 (155): 66 Ind Cas 461, Magbul Ahmad v. Farkat Ali, (Permissive possession is a question of legal inference to be drawn from the particular circumstances of the case.)

As to instances of permissive possession, see the undermentioned cases also ; (1929) A I R 1929 All 883 (884, 885): 192 Ind Cas 737, Kassım Albas v. Hans Ram. (Possession of parti plot of land by ryot is not adverse but permissive)

v. Chaganlaka. . Phal Surgh v. s not adverse) v. Dholu Pai. lishan Singh v. the abadi of a

village and occupied it for over twelve years, is not sufficient to establish a title against a ramindar by adverse possession) 7. (1928) A I R 1923 Cal 582 (583) : 117 Ind Cas 532, Monmotha Nath v. De-

pin Behary. (1922) A I R 1922 All 411 (412) : 77 Ind Cas 107, Jethu Minr v. Godawari Dutt.

(1869) 12 Suth W R 167 (165), Khuruckdharee Singh v. Rewallall Singh. (1926) A I R 1926 Sind 71 (73) : 90 Ind Cas 1007 : 21 Sind L R 185, La Walampi Para

. nd Cas 230, Sujan · licensee can never

8. (1870) 2 N W P H C R 16 (17), Wakee-ord-Deen v. Jhungore.

(1909) 1 Ind Cas 806 (506) (Mad), Nataraja Jujer v. Subramania Iver.

(1920) 38 Mad L Jour 15 (15) (Jonr). (Critical note on 41 All 669; A I R 1919 All 403, Jaschand v. Girwar Singh)

(1919) A I R 1919 Mad 215 (216): 53 Ind Cas 161, Venkatasubba Row v.

Bhawalal v. Sidil.

9. (1868) 2 N W P H C R 16 (17), Waker-ood-Deen v. Jhungore.

Notes 56-57

to the knowledge of the owner.10 The mere fact of long user11 by the Arts, 142 & 144 permissive occupant is not sufficient to alter the character of the permissive possession into an adverse one. Where the defendant had been let into possession even during the minority of the plaintiff. and the latter filed his suit more than seventeen years after he attained majority, it was held that the plaintiff was entitled to succeed if the defendant failed to show that the character of his possession had become adverse to the plaintiff more than twelve years before suit.12

Where the possession by the defendant of a portion of certain property is shown to be permissive, it may be presumed that the possession of the other portions of the property also was permissive in the absence of evidence to the contrary.13

Where the possession of the defendant is at the start adverse to the plaintiff, it cannot, by virtue of subsequent events, become a permissive one.14

A suit against a person who entered on the property with the permission of the plaintiff, but whose possession has become adverse to the plaintiff, would be governed by Article 144 and not Article 142. masmuch as the original entry of the defendant was not in contravention of the plaintiff's title and there was no dispossession or discontinuance of possession by the plaintiff. 15

57. Possession of agents, servants, etc. - If a person enters into possession as agent of another and on his request, his possession cannot be treated as that of an owner or as an independent possession. His possession is really, in law, the possession of the

(1921) A I R 1921 Oudh 124 (125) 63 Ind Cas 284 24 Oudh Cas 155, Ma-hendra Bahadur Singh v Chandrapal Singh (The decision also seems to hold that a mortgagee's possession as such is permissive. It is submitted that this is not correct—See Note 57, infra)

(1933) A I R 1933 Cal 102 (108) 140 Ind Cas 199, Zamuddin Hossain v. Md Abdur Rahim

[See also (1866) 4 Bom HC R App Cas 155 (163), Radhabat v Shama] 11. (1921) A I R 1921 All 294 (295) 63 Ind Cas 498, Ramu Ghatra v. Hemanta Kumars Debs

(1924) A I R 1924 Lah 315 (315) 71 Ind Cas 618, Bhag Songh v Abushal Singh

12 (1881) 1891 Pun Re No 91, Bela Singh v Buta 13. (1927) A I R 1927 Oudh 582 (584) 101 Ind Cas 730, Bam Abhilak v. Chau-

rasi [See also (1930) A I R 1930 Lah 437 (437) 129 Ind Cas 859, Allaha

Ditta . Budha (X at first in permissive possession of a portion of the area-His ab-orption of the rest is not adver-e)] 14. (1929) A I R 1929 Pat 117 (121) S Pat 549 115 Ind Cas 699. Bagesuars

Charan Singh v Jagarnath Kaurs 15 (1933) A I R 1933 Cal 102 (108) 140 Ind Cas 799, Zasnudden Howeren v. Md Abdur Rahim

Note 57

1. (1935) 159 Ind C15 322 (924) (P C), Bilrama Das v. Gemati Das.

Arts, 142 & 144 . Note 57

principal.2 And so long as the agency continues, the character of the agent's possession is not altered. Thus, where a person starts managing the property of a minor as his agent and continues to manage the same even after the minor has become a major, he cannot acquire a title to the property by adverse possession, although he continues to be in possession for more than twelve years after the minor attains majority.3 It has been held in the undermentioned cases that the possession of an agent is permissive. It is submitted that this view does not seem to be correct. An agent's possession is on behalf of the principal, while a permissive possession is one which a person enjoys on his own behalf though with the permission of another.

An agency may he express or implied, and hence where tho possession of a person can he traced to an implied agency, such possession cannot he treated as adverse,5 Thus, where a Buddhist father on his remarriage made over the land in suit to his four children by the first wife by a registered deed towards their mother's share of inheritance in full satisfaction thereof, but himself continued to he in possession and managed the land for the joint benefit of all. it was held that the possession of the father was not adverse to his children but only as agent and manager for the benefit of all the co-owners.6 On the same principle, where a person who is the only male member in the family manages the property on behalf of hie brother's widow, his possession is not adverse to the widow.' Similarly, the possession of a managing member of a joint Hindu family

(1892) 1892 Bom P J 101, Ramrav Dharamrav v. Ganesh Ramchandra. (1868) 1868 Pun Re No. 104, Ahmed Yar v. Shah Buksh.

(1929) A I R 1929 All 541 (542) : 114 Ind Cas 898, Girdhari v. Jodha. (1993) A I R 1933 Lah 786 (789) 149 Ind Cas 509, Hussain Ali Shah v. Sar-

dar Als Shah. [See also (1876) 1876 Born P J 59, Rango v. Collector of Nassh. (Person though having right in himself accepting agency from another cannot plead adverse possession against the latter.)

(1875) 23 Sath W R 03 (94), Azim Ali Khan Bahadur v Surussutty Debia. (Where an agent holds the lands of two principals and one of them claims the land of the other by adverse possession

^{2. (1871)} L R 12 Eq 149 (151, 152) · 40 L J Ch 775, Williams v. Pott.

See also Note 11, ante.

^{3 (1894) 1884} Pun Re No. 94, Bela Singh v. Bula,

^{4. (1926)} A I R 1926 Nag 286 (287) 92 Ind Cas 164, 27 Cri L Jour 212, Bayrao v. Mt Dadibas (1904) 9 Cal W N 663 (670), Jogendra Nath Singh v. Kalicharan Roy.

^{5. (1868) 1868} Pun Re No. 104, Ahmed Yar v. Shah Bulsh.

^{6. (1928)} A I R 1929 Hang 13 (15): 105 Ind Cas 599. 5 Rang 576, Maung Aung Tun v. Maung San Nyun.

^{7. (1924)} A I R 1924 Born 469 (469) . 87 Ind Cas 705, Kallappa Mallappa v. Kallappa Ningappa.

^{(1893) 13} Cal L R 328 (328), Asad Als Mardha v. Toppars Bibi (Where a female lives with her male relatives, the ordinary presumption is that they manage her property for her, and do not hold it adversely,)

is by and on behalf of the family as agent and cannot be treated as Arts, 142 & 144 adverse to the other members of the family.8

Note 57

Where, however, the agency has terminated, as for instance, by the agent's dismissal, the possession of the erstwhile agent thereafter is not on behalf of the principal but on his own account.9 It is also open to the agent after an open and notorious disavowal of the agency to acquire a title by prescription 10 The repudiation of the agency should, however, be distinct11 and to the knowledge of the principal,12 and accompanied by some erert act which would amount to an active assertion of an adverse right.13 An agent cannot by a mere wish or volution change the character of his possession.14

Where the agent trespassed into another man's property, it was held in the undermentioned case 15 that such trespass on his part was an individual act, and that unless there was clear and cogent evidence to show that the trespass had been committed by the agent in the interest of the principal, it could not be held that the latter was in any way benefited by such trespass.

The principles discussed above apply also to the case of a possession by a servant, which is only on behalf of the master. 16

(1917) A.I.R. 1917 Put 393 (394) 41 Ind Cas 39, Jagu Mandal v. Madhab Mandal. (The possession of the male members of the propositus firmly where the daughter was entitled to the property of her father governed by Dayabhaga School must be presumed to be on behalf of the daughter)

[See also (1906) 1906 Pun L R No 89 (93) 1906 Pun Re No. 88 . 1908 Pun W R No. 74, Mt Dhan Ders v Kanshs Ram

(1876) 25 Suth W R 439 (442), Sail Abdool Ali v Mt. Kulsum. (Mahomedan brother managing his sister's property.)]

8. (1873) 20 Suth W R 330 (331), Umbiha Soonduree Dossee v Shama Churn

(See also (1865) 2 Suth W R 181 (181), Mahomed Mudun v Ehode.

10 (1918) A I R 1918 Mad 183 (190) , 44 Ind Cas 630, Raman Somaya jipad v Kunhu Kutts Korillamma

(1893) 16 Mrd 456 (459), Sanharan v Krishna 11. (1893) 17 Bom 755 (758), Sanad Alambhan v Kasinlhan.

12 (1931) 1931 Mad W N 856 (856), Lahshmmarayan Nacada v Madarvayya

13 (1905) 7 Bom L R 836 (541), Raghunathy: Wulchand v. Verywandas Madhain

(1916) A I R 1916 Born 68 (76) 39 Ind Cas 552 41 Born 315, Lazmiratirao v Venkatesh

(1914) A 1 R 1914 Bom 296 (297, 298) 21 Ind Cas 763 (764) 38 Bom 53, Krishna Dirii v Bal Dirit (Held, mere withholding of rent for 2 or 3 years does not necessirily amount to an evert act)

14 (1854) 12 Bom 322 (324), Mulga Bhulabas v Manchar Ganesh.

(1901) 3 Bom L R 673 (675), Pemras Chandrabhan . Shripal Narayan. (Execution of a will by the manager is not sufficient) 15. (1937) A I R 1937 Lah 552 (556) I L R (1937) Lah 276 172 Ind Cas 37.

Zaffar Hussain v. Mahomed Ghaarid lin [See also (1897) L R 18 Q B D 796(814) 56 L J Q B 303, Lyell v Kennedy }

16. (1888) 12 Bom 322 (324), Muly Bhulabas v Manchar Ganesh.

Arts, 142 & 144 . Note 57

principal.² And so long as the agency continues, the character of the agent's possesson is not altered. Thus, where a person status managing the property of a minor as his, agent and continues to manage the same even after the minor has hecome a major, he cannot acquire a title to the property hy adverse possession, although he continues to he in possession for more than twelve years after the minor attains majority.³ It has been held in the undermentioned cases' that the possession of an agent is permissive. It is submitted that this yiew does not seem to be correct. An agent's possession is on behalf of the principal, while a permissive possession is one which a person enjoys on his own behalf though with the permission of another.

An agency may be express or implied, and hence where the possession of a person can be traced to an implied agency, such possession cannot be treated as adverse. Thus, where a Buddhist father on his remarriage made over the land in suit to his four children by the first wife by a registered deed towards their mother's share of inheritance in full satisfaction thereof, but himself continued to he in possession and managed the land for the joint henceft of all, it was held that the possession of the father was not adverse to his children but only as agent and manager for the henceft of all the co-owners on the same principle, where a person who is the only male memher in the family manages the property on behalf of his hrother's widow, his possession is not adverse to the widow. Similarly, the possession of a managing member of a joint Hindu family

(1892) 1892 Bom P J 101, Ramrav Dharamrav v. Ganesh Ramchandra. (1868) 1868 Pun Re No. 104, Ahmed Yar v. Shah Buksh.

(1929) A I R 1929 All 541 (542) : 114 Ind Cas 693, Girdhari v. Jodha. (1933) A I R 1933 Lah 786 (789). 149 Ind Cas 509, Hussain Ali Shah v. Sar-

dar Als Shah.

[See also (1876) 1876 Bom P J 59, Rango v. Collector of Nash. (Person though having right in himself accepting agency from another cannot plead adverse possession against the latter.)

(1875) 29 Sath W R 93 (94), Ann Als Khen Bahadur, v. Surusutly Deba. (Where an agent holds the lands of two principals and one of them claims the land of the other by adverse possession through the possession of the agent of such land, he must prove that such adverse claim has been brought to the notice of the other and that the agent has been holding his land adversely to such other.)]

 (1871) L R 12 Eq 149 (151, 152) · 40 L J Ch 775, Williams v. Pott. See also Note 11, ante.

3. (1884) 1884 Pun Re No 94, Bela Singh v. Buta.

4 (1926) A I R 1926 Nag 286 (287) 92 Ind Cas 164, 27 Cri L Jour 212, Bajirao

(1904) 9 Cal W N C63 (670), Jogendra Nath Singh v. Kalicharan Roy.

5. (1868) 1868 Pun Re No. 101, Ahmed Far v. Shah Bulih,

6. (1929) A I R 1928 Rang 13 (15): 105 Ind Cas 598; 5 Rang 576, Maung Aung Tun v Maung San Nyun,

7. (1924) A I R 1924 Born 469 (469) : 87 1nd Cos 705, Kallappa Mallappa v.

"They are unable to affirm as a general proposition of law Arts, 142 & 144 that a person who is, in fact, in possession of land under a Notes 59-59a tenancy or occupancy title can by mere assertion in a judicial proceeding and the large of six or twelve years, without that assertion having been successfully challenged, obtain a title as an under-proprietor to the land."

The mere non-payment of rent or discontinuance in the payment of rent cannot by itself create an adverse nossession.3

See also Notes 12 and 13 to Art. 139 aute for a fuller discussion.

59a. Encroachment by tenant. - Where a tenant encroaches on land which adjoins his holding and which belongs to the same landlord, the possession by the tenant of the land so encreached upon would be adverse to the landlord. The right acquired by the tenant by such adverse possession for the statutory period would depend on the nature of the right in assertion of which the adverse possession was held. Thus, where the tenant was in adverse possession claiming an absolute right in the land, he would acquire by prescription an absolute title to the land But where the tenant merely claims to he a tenant of the land, he can acquire only a tenancy in the land.3 The general presumption is that the tenant only claims the additional land as part of his holding. Hence, unless some act is proved on his part which shows that his intention was to assert an absolute title to the land, it will be presumed that he only asserted a right to a limited interest in the land as forming part of his tenancy. In Gooroodas Roy v Issur Chunder Bose, b Markhy, J. observed as follows "We think the true presumption as to encroachments made hy a tenant during his tenancy upon the adjoining lands of his landlord is that the lands so encroached upon are added to the tenure, and form part thereof for the henebt of the tenant so long as the original bolding continues, and afterwards for the benefit of his landlord, unless it clearly appeared by some act

5 (1922) A I R 1922 P C 272 (278) 49 Ind App 399 2 Pat 38 71 Ind Cas 984 (PC), Jagdeo Naram Singh v Baldeo Singh (40 Cal 173, Approved)

Note 59a

- 1. (1999) A I R 1929 Pat 624 (626) 117 Ind Cas 63t Partial han Singh v Chathu Sahi
- 2. (1926) A I R 1926 Cal 883 (885) 95 Ind Cas 622, Decendra Naravan v Jhumur Pramanis
- 3. (1926) A I R 1926 Cal 634 (630) 92 Ind Cas 963, Gepul Chardra v Satua Bhanw.
 - (1930) A I R 1930 Cal 579 (583) 127 Ind Cas 763 57 Cal 371, Multaleska Dan v. Manilal Jana.
 - (1905) 2 Cal L Jone 125 (185), Ishin Chindra Matter v Raja Ramranjin 1...t) A I R 1926 Cal 883 (885) 95 In1 Cas 622, Detendra Naraman v Jhumur Pramansl.
 - 11) 10 Ind Cas 575 (576) : 35 Mad Clb, Muthwalp Theren v Refert Gorden Orr. i) 2 Cal L. Jour 175 (185), Ishan Chandra Wetter v . Rana Ramranjan
 - ' 22 Sath W R 246 (247)

Arts. 142 & 144 Notes 58-59

58. Possession by husband or wife. — Where a man and his wife are living togother, and the husband is in possession of the wife's property, his possession must be considered to be on behalf of his wife and not adverse to ber.\(^1\) In such a case, the husband is presumed to be the agent of his wife.\(^2\) On the same principle it has been held that where a Mahomedan sells to his wife certain property in lieu of her mehr (dower) but himself continues in possession there-of, his possession is on behalf of his wife and not adverse to her.\(^2\)

It follows from what has been said above that where the husband and wife are in *joint possession*, no question of adverse possession can arise as between them.

A wife, who holds possession on hebalf of her husband during his absence, cannot, on the same principle, acquire a title by adverse possession gaunst the lunshand.⁵

69. Possession of tenant. — As has been seen in Note 12 to Article 139, a tenant's possession is not adverse to his landlord.\(^1\)
The reason is that a tenant cannot dispute his landlord's title so long as he remains in possession under an agreement which he made with him.\(^2\) In Muhammad Mumtaz Ali Khan v. Moham Singh\(^3\) their Lordships of the Privy Conneil affirmed the observation they had made in Muhammad Mumtaz Ali Khan v. Mohan Singh\(^3\) to the following effect:

(1869) 11 Suth WR333 (334), Meher Aliv. Golam Nusuf. (Possession held by a servant under a decree which reserves master's right to dismiss him.) (1878) 1878 Bom P J 186. Ramachandra v. Gunwantrao.

Note 58

 (1875) 24 Suth W R 274 (275), Sooda Ram Doss v. Joogul Kishore Gupto. (1868) 9 Suth W R 153 (158), Abdool Als v. Kurrumnissa. (Suit by a Maho-

2. (1876)

 (1916) A I R 1916 Bom 159 (161, 162): 41 Bom 5: 36 Ind Cas 715, Ibrahim Bhura Jamnu v. Isa Rasul Jamnu.

4. (1928) A I R 1923 Nag 275 (276) · 103 Ind Cas 435, Mayadad Khan v. Hazarı Lal.

 (1878) 4 Cal 227 (329): 2 Shome L R 106, Dejoy Chunder Banerji v. Kally Prosonna Mockerji.
 Note 59

 (1902) 25 Mad 507 (511): 12 Mad L Jour 119, Seshamma Shettali v. Chickava Hegade.

(1873) 20 Suth W R 398 (399), Bungsraj Bhookta v. Megh Lall Poores Gossen (The possession of a sub-lesses of the tenant cannot be adverse to the amorety hardlead.

the superior landlord.) (1928) 117 Ind Cas 812 (845), 32 Cal W N 720 (723), Bejoy Chand v. Suhumars Dets

(1872) 18 Suth W Il 443 (414), Lakhoo Khan v. Wite.

(1891) 8 Cal 79 (81): 10 Cal L R 118: 9 Cal L R 173, Kasimunnissa Bibs v. Nilrutton Bose.

 (1935) A I R 1935 P O 59 (61): 154 Ind Cas 945 (PC), Chandrika Prasada v. B B & C. I Ry Co

9. (1929) 121 1nd Cas 530 (532) : 59 Mad L Jour 226 (228) (P C).

4. (1923) A 1 R 1923 P C 116 (121): 50 Ind App 202: 26 Oudh Cas 231: 45 All 419 74 Ind Cas 476 (P C)

"They are unable to affirm as a general proposition of law Arts, 142 & 144 that a person who is, in fact, in possession of land under a Notes 59-59a tenancy or occupancy title can by mere assertion in a judicial proceeding and the lanse of six or twelve years, without that assertion having been successfully challenged, obtain a title as an under-proprietor to the land."

The mere non-payment of rent or discontinuance in the payment of rent cannot by itself create an adverse nossession 5

See also Notes 12 and 13 to Art. 139 ante for a fuller discussion.

59a. Encroachment by tenant. - Where a tenant encroaches on land which adjoins his holding and which belongs to the same landlord, the possession by the tenant of the land so encreached upon would be adverse to the landlord.1 The right acquired by the tenant by such adverse possession for the statutory period would depend on the nature of the right in assertion of which the adverse possession was bold. Thus, where the tenant was in adverse possession claiming an absolute right in the land, he would accurre by prescription an absolute title to the land.2 But where the tenant morely claims to be a tenant of the land, he can acquire only a tenancy in the land 3 The general presumption is that the tenant only claims the additional land as part of his holding. Hence, unless some act is proved on his part which shows that his intention was tn assert an absolute title to the land, it will be presumed that he only asserted a right to a limited interest in the land as forming part of his tonancy In Gooroodas Roy v Issur Chunder Bose, Markhy, J observed as follows "We think the true presumption as to encroachments made by a tenant during his tenancy upon the adjoining lands of his landlord is that the lands so encroached upon are added to the tenuro, and form part thereof for the benefit of the tenant so long as the original holding continues, and afterwards for the benefit of his landlerd, nnless it clearly appeared by some act

Nnte 59a

- 1 (1929) A I R 1929 Pat 624 (626) 117 Ind Cas 636 Hamlahhan Singh v Chathu Sahs
- 2 (1926) A J R 1926 Cal 883 (885) 95 Ind Cas 622, Decendra Narayan v Jhumur Pramansh,
- 3 (1926) ATR 1926 Cal 634 (636) 92 Ind Cas 963, Gopal Chandra v Satya Bhann
 - (1930) A I R 1930 Cal 579 (583) 127 Ind Cas 763 57 Cal 371. Multaleshs Dass v Manslal Jana
 - (1905) 2 Cal L Jour 125 (185), Ishan Chandra Matter v Rana Ramranian (1926) A I R 1926 Cal 683 (485) 95 Ind Cas 622, Detendra Narayan v Jhumur Pramanil
- 4, (1911) 10 Ind Cas 575 (576) 35 Mad 618, Muthuraku Theran v Refert Gorden Orr.
 - (1905) 2 Cal L. Jour 125 (185), Islan Chandra Watter v. v. Paga Pamranjan.

5 (1874) 22 Suth W R 246 (247)

^{5 (1922)} A I R 1922 P C 272 (278) 49 Ind App 399 2 Pat 38 71 Ind Cas 984 (P C), Jagdeo Naram Singh v Baldeo Singh, 40 Cul 173. Approved)

Arts, 142 & 144 Notes 58-59

58. Possession by husband or wife. — Where a man and his wife are living together, and the busband is in possession of the wife's property, his possession must be considered to be on behalf of his wife and unt adverse to her.\(^1\) In such a case, the husband is presumed to be the agent of his wife.\(^2\) On the same principle it has been held that where a Mahomedan sells to his wife certain property in lieu of her mehr (dower) but binself continues in possession there, his possession is un behalf af his wife and not adverse to her.\(^3\)

It follows from what has been said above that where the husband and wife are in *joint possession*, no question of adverse possession can arise as between them.

A wife, who holds possession on behalf of her husband during his asence, cannot, on the same principle, acquire a title by adverse possession grainst the busband.

69. Possession of tenant.—As has been seen in Note 12 to Article 139, a tenant's possession is not adverse to his landlord. The reason is that a tenant cannot dispute his landlord's title so long as he remains in possession under an agreement which he made with him. In Muhammad Mumtaz Ali Khan v. Dhanna Singh, their Lordships of the Privy Council affirmed the observation they had made in Muhammad Mumtaz Ali Khan v. Mohan Singh, to the following effect:

Note 58

- (1675) 24 Suth W R 274 (275), Sooda Ram Doss v. Joogul Kishore Guplo. (1668) 9 Suth W R 153 (163), Abdool Als v. Kurrumnissa. (Suit by a Maho-
- (1916) A I R 1916 Born 159 (161, 162) · 41 Born 5 : 36 Ind Cas 715, Ibrahim Bhura Jamnu v. Isa Rasul Jamnu.
- 4. (1928) A I R 1928 Nag 275 (276). 108 Ind Cas 435, Mayadad Khan v. Hazari Lal.
- (1878) 4 Cal S27 (329): 2 Shome L R 106, Defoy Chunder Banerji v. Kally Prosonno Mookerji.

Note 59

- 1. (1902) 25 Mad 507 (511): 12 Mad L Jour 119, Seshamma Shellali v. Chichava Hegade.
 - (1873) 20 Sath WR 393 (399), Bungsraf Bhookla v. Megh Lall Poores Gossein. (The possession of a sub-lessee of the tenant cannot be adverse to the appears I and local.)
 - (1923) 117 Ind Cas 812 (815) : S2 Cal W N 720 (723), Dejoy Chand v. Sukumarı Deta
 - (1872) 18 Suth W R 443 (144), Lakhoo Khan v. Wate.
 - (1691) 8 Cal 79 (84): 10 Cal L R 113: 9 Cal L R 173, Kasimunnissa Bibs v. Nitrutton Bose.
- (1935) A 1 R 1935 P C 59 (61) 154 Ind Cas 915 (PC), Chandrika Prasada v. B. B & C. I Ry Co
- 3. (1929) 121 Ind Cas 530 (532) : 53 Mad L Jour 226 (228) (P C),
- 4. (1923) A I R 1923 P C 118 (121) 50 Ind App 202 : 26 Ondb Can 231 , 45 All 419 74 Ind Cu 476 (P C).

"They are unable to affirm as a general proposition of law Arts, 142 & 144 that a person who is, in fact, in possession of land under a tenancy or occupancy title can by mere assertion in a judicial proceeding and the lanse of six or twelve years, without that assertion having been successfully challenged, obtain a title as an under-propiletor to the land."

Notes 59-59a

The mere non-payment of rent or discontinuance in the payment of rent cannot by itself create an adverse possession.5

See also Notes 12 and 13 to Art. 139 ante for a fuller discussion.

59a. Encroachment by tenant. - Where a tenaut encroaches on land which adjoins his holding and which belongs to the same landlord, the possession by the tenant of the land so encroached upon would be adverse to the landlord.1 The right acquired by the tenant by such adverse possession for the statutory period would depend on the nature of the right in assertion of which the adverse possession was held. Thus, where the tenant was in adverso possession claiming an absolute right in the land, he would acquire hy prescription an absolute title to the land 2 But where the tenant merely claims to be a tenant of the land, he can acquire only a tenancy in the land " The general presumption is that the tenant only claims the additional land as part of his holding. Hence, unless some act is proved on his part which shows that his intention was to assert an absolute title to the land, it will be presumed that he only asserted a right to a limited interest in the land as forming part of his tenaucy 1 In Goorcodas Roy v Issur Chunder Bose, 5 Markhy, J observed as follows "We think the true presumption as to encreachments made by a tenant during his tenancy upon the adjoining lands of his landlord is that the lands so encroached upon are added to the tenure, and form part thereof for the benefit of the tenant so long as the original holding continues, and afterwards for the benefit of his landlord, unless it clearly appeared by some act

5 (1922) A I R 1922 P C 272 (278) 49 Ind App 399 2 Pat 38 71 Ind Cas 984 (PC), Jagdeo Naram Singh v Baldeo Singh. (40 Cal 173, Approve1)

Note 59a

- 1 (1929) A I R 1929 Pat 624 (626) 117 Ind Cas 636 Hamlal han Singh v Chathu Sahr.
- 2 (1926) A I R 1926 Cal 883 (885) 95 Ind Cas 622, Decendra Narayan v Jhumur Pramanih 3 (1926) A I R 1926 Cal 634 (636) 92 Ind Cas 963, Gopal Chandra v Satya
- **Uhante** (1930) A I R 1930 Cal 579 (593) 127 Ind Cas 763 57 Cal 371. Wuktakeshi
 - Dasi v Manilal Jana (1905) 2 Cal L Jour 125 (195), Ishan Chandra Matter v Rasa Ramransan.
 - (1926) A I R 1926 Cal 883 (885) 95 Ind Cas 629, Detendra Narayan v. Jhumur Pramanil.
 - Gorden Orr (1905) 2 Cal L Jour 125 (185), Ishan Chandra Watter v v Raya Ramran jan.

35 Vad 618, Muthurahu Theran v. Robert

4 (1911) 10 Ind Cas 575 (576) 5 (1574) 22 Suth W R 246 (247) Note 59a

Arts, 142 & 144 done at the time that the tenant made the encrosehment for his own benefit."

> In order to confer on the tenant a right of tenancy by prescription in the land encreached upon by him, it is not necessary to show that he set up a right of tenapcy in such lands, to the knowledge of the landlord.6 But it has been beld that unless the tenant's claim to an absolute title to the encroached lands is made to the knowledge of the landlord, the tenant will acquire only a tenancy right in respect of such lands. The reason given is that as the tenant encroaches prima facie in his character as tenant, the landlord is entitled to treat him as such till he has notice of a repudiation of such character and an assertion of a hostile title.7

> Where a tenant grazes cattle and cuts grass on the adjoining waste lands of his landlord, such acts would be presumed to have been done with the permission of the landlord inasmuch as the acts are such as would ordinarily be done by tenants on waste lands of their landlord without any objection by him. Hence, a tenant cannot claim to have been in adverse possession of the waste lands merely by reason of such acts.8

> Where a tenant encroaches on land which adjoins his holding and which belongs to a person other than his landlord, the possession of such land by the tenant is adverse to the owner thereof. But such adverse possession enures to the benefit of the tenant's landlord. unless the tenant has shown clearly that he intended to hold the land for his own benefit.9

In Whitmore v. Humphries, 10 Willes, J., observed as follows :

"By the rules of law applicable to this subject the landlord is entitled, at the determination of the tonancy, to recover from the tenant not only the land demised but also any land which the tenant may have added to it by encroachment from the waste, such encroachment being deemed to be made by him as tenant as an addition to the holding and consequently for the benefit of his landlord, upless it is made under circumstances which show an intention to hold it for his own benefit alone and not as a part of his holding under the landlord

"It is not confined to cases where the encreachment is upon land to which the landlord is entitled; it applies to cases where the land encroached muon does not belong to the landlord. It is held in such cases that as between the landlord and the tenant

6. (1911) 10 Ind Cas 575 (576) . 35 Mad 618, Muthurala Theran v. Robert Gorden Orr. (Dissenting from 31 Cat 397.)

7. (1905) 2 Cal L Jour 125 (139], Ishan Chandra Miller v. Raja Ramranjan. 8. (1903) 31 Cal 397 (105), Wals Ahmed Choudhry v. Tota Meah,

9. (1933) A I R 1933 Nag 112 (113] : 29 Nag L R 48 : 144 Ind Cas 696, Jan Krishna v. Babu.

(1936) 163 Ind Cas 597 (906) . 63 Cal 200, Surendra Kumar Boy v. Ahred Navab Chordhry. 10. (1871) 41 LJCP 43 (46): 20 W R (Fng) 79 : L R 7 C P 1 : 25 L T 496.

(Quoted in 163 Ind Cas 897 (906),)

the tenant must wima facie he deemed to have taken the Arts. 142 & 144 additional land as part of his tenancy and for the henefit of his Notes 89a - 60

landlord

"There is often great temptation and opportunity afforded to the tenant to take in admining land which may or may not he his landlord's and it is considered more convenient and more in accordance with the rights of property that the tenant, who has availed himself of the opportunity afforded him by his tenancy to make encroachments, should be presumed to have intended to make them for the henefit of the reversioner, except under circumstances pointing to an intention to take the land for his own henefit exclusively."

Where a tenant encroaches on the adjoining land belonging to a person other than his landlord and attorns to such person, there is no adverse possession by the tenant and his original landlord cannot derive any benefit from his possession of such land 11

60. Possession under invalid transaction. - Where a person takes possession of monerty under colour of a transfer which is inoperative, such possession is adverse to the true owner 1 The reason is that in such cases the transferee gets no title under the transfer and his possession is therefore without title and in contravention of the title of the true owner. Thus, where A executes an unregistered deed of gift in favour of B and puts B in possession of

11. (1936) 163 Ind Cas 897 (906) 63 Cal 309, Surendra Kumar Roy : Ahmed Nawab Choudhry

Note 60

- 1. (1866-68) 3 Mad H C R 5 (24), Syed Ali Saib . Sri Raja Sanyasiraz Peddabaliyara Simhulu Bahadur (Possession under alternation in contra-vention of \$ 8 of Regulation, 25 of 1802)
 - (1903) 1 Ind Cas 663 (664) 33 Bom 116, Adam Umar Sale v Bapu Baraji.
 (Possession acquired under an alternation made in contravention of Section 8 of the Bhagdars Act, 1862)
 - (1929) A I R 1929 Pat 117 (119, 120) 8 Pat 549 115 Ind Cas 699, Bage-suari Charan Singh v Jagarnath Kuari. (Grant in contravention of Section 19.4, Chota Naguri Encumbered Estates Act (6 of 1376)— Yet title can be acquired by twelve years' adverse possession)
 - (1993) A I R 1993 Bom 209 (214) 149 Ind Cas 464, Sabara Yellappa v. l'amanappa Sabu (Sale void on the ground of immoral considera-11011)
 - (1900) 23 Mad 271 (279) 27 Ind App 69 4 Cal W N 329 10 Mad L Jour 29 2 Bom L R 597 7 Sar 671 (PC), Granasambanda Pandara Sannadhi v Velu Pandaram.
 - (1934) A I R 1934 Oudh 449 (451) 152 Ind Cas 180, Ram Dutt Singh v. Mohammad Natir Khan (Person acquiring possession under invalid title-Continuous possession for more than 12 years makes his title unassaulable)
 - (1878) 4 Cal 327 (330, S31) 2 Shome L R 106, Bejou Chunder Bauerjee . Kally Prosons o Muhersee (Lerse granted by unutilhorised person —Possession of lessee is adverse to the real owner)
 - (1937) A I R 1937 Oudh 165 (167) 164 Ind Cas 1003 12 Luck 516 Gur Din Sale : Bades (Transferee of common property from one of several coowners-Transferre . possession to adverse to the other co-owners)
 - (1912) 15 Ind C1 s 196 (201) S1 4ll 289 (P C) Parbatt v Muhammad Muraffar th khan thosession under transfer by person not entitled to the property is idverse to the true owner }

Arts. 142 & 144 Note 60

the property in virtue of the gift, the possession by B is adverse to A from the date of his entering into possession. Similarly, where A executes a sale deed in favour of B but the sale is void for want of lawful consideration, the possession of B under such sale is adverse to A. See the undermentioned cases for other instances.

- (1925) A I R 1925 Mad 861 (866): 87 Ind Cas 621, Ghanshamdess Narayandoss v. Sarasmats Bas. (Possession under void legacy is adverse to the heir of the testator)
- heir of the testator) (1926) A I R 1926 Oudh 431 (442): 96 Ind Cas 47; 26 Oudh Cas 176: 2 Luck 507, Jagdev Singh v. Deputy Commissioner Partabyarh. (Do.)

(1924) A I R 1924 Bom 174 (176): 48 Bom 166: 82 Ind Cas 533, Sangawa

Ind Cas 1100: 57 All 159:

'eo Prasid Sinoh v. Karia

Bharths.]

...

 (1924) A I R 1924 Pat 341 (342) . 73 Ind Cas 41, Gayani Sahu v. Balchand Sahu.

 (1933) A I R 1933 Born 209 (214) . 149 Ind Cas 464, Sabava Yellappa v. Yamanappa Sabu.

4. (1919) A I R 1919 P C-44 (47): 43 Mad 244: 46 Ind App 285: 53 Ind Cas 90I (P C), Varada Pillas v. Jeevarathnammal. (Possession under

void gift is adverse to the donor.) (1929) A I R 1929 Pat 117 (120, 121): 8 Pat 549 115 Ind Cas 699, Bageswari Charan Singh v. Jagarnath Kuari. (Do.)

(1924) A I R 1924 Nag 222 (223, 224): 79 Ind Cas 117, Mt. Kasturi v. Baliram. (Do.)

(1924) A I R 1924 Mad 800 (800): 82 Ind Cas 67, Narayanaswams v. Thangatelu. (Do)

lu v. Subbamma. (Do.)
. 927: 1 Luck 33, Sceretary of

(1911) 12 Ind Cas 225 (228): 36 Bom 214, Casamally v. Currimbhoy Ebrahim. (Possession under void trust deed is adverse to the author of the

trust.)
(1925) A I R 1925 Oudh 745 (746): 69 Ind Cas 478, Wajid Als v. Mt. Salima Begam. (Possession under roid gift is adverse.)

(1918) A I R 1918 P O 180 (181): 46 Cal 694: 46 Ind App 60: 50 Ind Cas 202 (P C), Rans Kaar Mans Susph v. Nauch Bahadur of Murshidahad. (Possession of purchaser under void sale is adverse to the true owner)

(1925) A I R 1925 Pat 787 (795): 4 Pat 894: 92 Ind Cas 1034, Mt. Jasoda Kuar v. Janak Missir. (Do)

(1918) A I R 1918 Oudh 457 (459) 47 Ind Cas 694, Sajjad Mirea v. Mt. Nanhi Khanam. (Do)

(1926) A IR 1926 Odd 141 (142): 72 Ind Cas 99, Mahipal Singh v. Sarjoo Frasad. (Possession of vendes under unregistered sale doed is adverse to the vendor.)

(1930) A I R 1930 Bom 448 (449) . 127 Ind Cas 910, Chhaganbhai v. Tulshibhai. (Possession under void lease is adverse.)

(1923) A I R 1923 Born 146 (147): 77 Ind Cas 952, Chalurbhas Lallubhas v. Motthas Bapuys. (Do.)

(1921) 64 Ind Cas 756 (757) (Cal), Purna Chandra Das v. Joy Lal Payada.

(1926) A I R 1926 Lah 431 (432); 91 Ind Cas 1000, Isher Singh v. Wir Singh. (Posession under deed of transfer executed by person not entitled to property is adverse to true owner.) In the following cases it was held that the possession of the Arts. 152 & 144 mortgagee under a void usufructuary mortgage was permissive and as such not adverse to the mortgagor. It is submitted that the decisions are not correct.

Note 60

But, the person in adverse possession under an invalid transfer cannot, in every case, ohtain absolute title to the property by being in such possession for the statutory period. The right acquired by him hy such possession will only be the 11ght purported to he transferred 6 Thus, where a person enters into possession under a void mortgage, he can only acquire the right of a mortgages by prescription 7 Similarly, where a person enters into possession under a void lease, he can only acquire the right of a lessee hy prescription 74 So also, a person entering into possession as a trustee under a void trust deed acquires by prescription only the right of a trustee 5

....

(1937) A I R 1937 Cal 88 (93) 41 Cal W N 896 (399) 169 Ind Cas 918, Birajmohini Dassi v Sarala Deti (Do) (1920) A I R 1920 Mad 593 (601) 43 Mad 436 56 Ind Cas 519, Naratimha Rao v. Papanna (Sale deed void owing to fraud on Registration law)

(Sec also (1911) 12 Ind Cas 362 (363) 85 Bom 438, Sambhu Hanmanta v. Namanarayan. (Vendee under an unregistered sale deed claiming a hen over the property in respect of mortgage discharged by him-Adverse possession commences after expiry of 12 years from date of the lien.)

(1898) 21 Mad 169 (171) . 8 Mad L Jour 117, Munsappan Chelly v. Muppel Nair (Possession of Jenmi lands under cowle from Government is adverse to the Jenmi H

5, (1928) A I R 1929 All 552 (552) 117 Ind Cas 831, Mt Ray Rans v Gulab (1923) A I R 1923 All 191 (192) 79 Ind Cas 232, Durga Chowdharn v Jagroop.

(1929) A I R 1929 Nag 115 (116) 118 Ind Cas 57, Sukhlat v. Bisesar, 6 (1980) A I R 1930 Oudh 75 (77) 124 Ind Cas 300, Deputy Commissioner, Fyzabad v Bhaguan Din. (Person holding possession of land of grantee

adversely acquires same title as grantee by prescription and no more) 7, (1912) 16 Ind Cas 960 (960, 961) (Mad), Sundara Gurukkal v. Subramania. (1928) A I R 1928 Mad 282 (290) 106 Ind Cas 691, Bala Tripura Sundar-

amma v Secretary of State. (1897) 7 Mad L Jour 11 (12, 13), Mamunhs v. Gr. Sham Bhatla

(1930) A I R 1930 Nag 26 (27) 118 Ind Cas 674, Bhagona v Guman. (1903) 26 Mad 72 (73) 12 Mad L Jour 410, Ballrishnamma Subudhi v V snayaka Rawa Sings Bisoys

(1930) A I R 1930 Mad 261 (265) 127 Ind Cas 139, Somalinga L. Rengier v. Ramsa Santhu

(1915) A I R 1915 Born 102 (106) 39 Born 359 . 28 Ind Cas 412, Javerbhan y Gordhan Narss.

(1921) A I R 1921 Mad 410 (412) 44 Mad 946 . 64 Ind Cas 398, Sontyana Gorala Dassee v Inaputalagula Rams. (1927) A I R 1927 All 811 (314) 100 Ind Cas 346, Maha Mancal Ray v

Aushen Kandu. (1935) A I R 1935 All 578 (579) 156 Ind Cas 813, Shamrat: Euer v

Kalika Singh. (1933) A I R 1933 Pat 288 (290) 144 Ind Cas 439, Abdul Jathar . Gulab

7a (1930) A I R 1930 Bem 448 (449) 127 I C 910, Chhaganbhar v Tulehibhar. 8. (1935) A I R 1935 All 458 (458) 157 I C. 1019, Sheo Pershad v Karım Duz.

Arts. 142 & 144 Note 60

In the undermentioned case^{3a} where A entered into possession of property as the adopted son of B and the adoption was invalid, it was held that A could not acquire by adverse possession any interest different from that which he would have taken if the property had rightly passed to him as the adopted son of B. In $Dalton \ v. \ Fitz-gerald$, ^{3b} the principle was stated as follows:

"II a man obtains possession of land claiming under a deed or will, he cannot afterwards set up another title to the land against the will or deed, though it did not operate to pass the land in question and if he remains in possession till twelve years have clapsed and the title of the testator's heirs is extinguished, he cannot claim, hy possession, an interest in the property different from that which he wandd have taken if the property had passed by the will or deed."

Where a transfer of property by A to B is good during the lifetime of A but void beyond his lifetime, the possession of B undor such transfer would be adverse to A's representatives after his death.

Where property is transferred to a person for his life, the possession of his representative after his death will be adverse to the transferr. 19

A leased centain property to B and then made a gift of the troperty to C, by means of an unregistered deed, and directed the tonant in pay the nent to the donce, C, in future. This was done and C received the rents from B, the lessee. It was hold by the Madras High Court¹¹ that nevertheless, C could not be said to be in adverse possession against A until the expiry of the lease. It is submitted that the decision is not correct, as C clearly was in adverse possession of the land. The court of the lease.

Where a transferee of property under a voidable transfer enters into possession, his possession is not adverse till the transfer is set aside. But, in such cases, if a suit for setting aside the transfer is barred by limitation, a suit for possession also will be harred. B

(See (1910) 5 Ind Cas 931 (934) (Mad), Venhatarama Murti v. Nara. yanamma.

(1928) A I R 1928 Cal 130 (191): 105 Ind Cas 617. 55 Cal 448, Mt. Rukeya Banu v. Mt. Natira Banu]

Sa (1924) A I R 1924 Nag 73 (74) . 78 Ind Cas 840, Jageshwar v. Pandurang.
Sb.(1897) 2 Ch 86 (93) . 66 L J Ch 604 : 76 L T 700 : 45 W R (Eng) 685.

: 48

starts (1936) A I R 1936 P C 183 (187) : 162 Ind Cas 465 : 63 Ind App 261 - 53 Mad 609 (P C), Dascashkaman Pomambola v, Penyanan Chilis.

(1909) 4 Ind Cas 1006 (1006) (Lab), Mt. Surjo v. Hira,
 (1909) 3 Ind Cas 122 (123) (Mad), Acharath Bappon v. Mathummal Chots.

12. (1917) & I R 1917 Rom 235 (237) ; 42 Ind Cas 908, Shankerbhas Kashibhas v. Rassing is Jasuat Sing is.

13 (1911) 9 Ind Cas 377 (374) (Cal), Sham Chandra v. Godadhar Mandal.

Where a person enters into possession under a road transfer, the Arts. 142 & 144 transfer need not be set aside before a suit for possession can be Notes 60-60a brought against him and so, although the period of limitation for a suit to set aside the transfer has expired, a suit for possession against the transferee will not be barred.14

Where A transfers certain property to B under a yold document and delivers possession of the property to him under such transfer, A" discontinues" possession within the meaning of Article 142 and therefore a suit for possession by A against B in such cases will come under that Article.13 The view held in certain decisions18 that Article 144 will apply to such cases is, it is submitted, not correct.

In the undermentioned case, 17 A executed a benami document in favour of B and nut the latter in possession of the monenty A then sued B for possession. It was held by the Privy Council that Article 144 applied to the case. As B's possession could not, at its incention, have been adverse to A. Article 142 could not apply.

60a. Possession under transfer which subsequently becomes invalid. Where A transfers property to B and the transfer is valid until A's life or until a certain contingency. B's entry on such moperty cannot be said to be in contravention of the title of the nerson entitled to the property after A's death or on the occurrence of the contingency. Nor can it he said that there is any dispossession or discontinuance of possession of such person by the transferee, though it may be discontinuance of possession on the part of A. A suit by the person entitled on A's death or on the happening of the contingency 14. (1911) 9 Ind Cas 377 (378) (Cal), Sham Chandra Dafadar v. Godadar Mandal

(1919) A I R 1919 Low Bur 53 (55) 50 Ind Cat 324 9 Low Bur Rul 186, Ma Nyı Ma v Aung Myat (Sale be administrator without last c of Court-Right of hours to treat sale as void is not extinguished by lapse of six years-Suit for po-session within 12 sears of sale is not harred)

15 (1925) A I R 1925 Lah 239 (239, 240) 81 Ind Cas 923, Sadullah s Suleman (1924) A I R 1924 Pat 341 (342) 73 Ind Cas 41, Gayans Sahn v. Dalchand

Sahu (1898) 21 Mad 169 (171) 8 Mad L Jour 117, Muniappen Chetti v Murril Nayar.

(1923) A I R 1923 Cal 13 (16) 52 Ind Cas 698. Labet Mohan Sen v. May o. ran ian Ghose Chondhury (1932) A I R 1932 Cas 115 (116) 133 Ind Ct. 102, Aran Chandra Lau v.

Ramanath Karmalar [See (1911) 9 Ind Cas 377 (375) (Cal), Sham Clandia Dafada: 1. (codadhar Vandal]

(See also (1923) 4 I R 1923 Cd 428 (429) 70 Ind Cas 569, Dhuerara Krishna v Mehendra Nath]

16 (1937) A I R 1937 Oudh 521 (522) 171 Ind Ca- 15" We Lachas v Hayat Mohan mad (Sale deed by minor to 10 id ab mate > Miror can - 10 for possession directly-Suit is governed by Article 114 read with Section 6)

(1901) 26 All 346 (353) 1904 All W X 53 1 All I J. 1 53 for the I castel v. Mayat Llan

 (1908) 85 Cal 551 (560) 85 Ind App 98 10 Rem I R 5-0 7 All I Jeer 220 12 Cal W N 562 7 cal L Joer 55 14 In I R 105 18 Mal I, Jour 277 4 Mad I. Tim 12 4 L w Bur B 1 22 (PA) I effect Permial Clette v Muniarde Seren

Arts: 142 & 144 Notes 60a – 61

would be governed by Article 144, time running from the date of the death or the happening of the contingency as the case may be.

Where property of a person holding an estate for life therein is forfeited and sold by Government and is purchased by X, a suit by the person entitled after the death of the holder for life would be governed by Article 144.*

See also Noto 79 infra.

61. Adverse possession of inalienable property.—There are certain cases in which an alienation of property is prohibited by law. Thus, under the Bombay Hereditary Offices Act, an alienation by a watandar of vatan property is not competent except for the life of the watandar. Similarly, under the Madras Hereditary Villago Offices Act, 1895, an alienation of property attached to a villago service inam is prohibited. The question bas arisen whether in the case of such property a title cau be acquired by adverse possession for the statutory period. Before the decision of the Privy Council in Madhav Rao v. Raghunath, it had been held generally by the High Court of Bombay that such property could be acquired by adverse possession. In Madhav Rao v. Raghunath, their Lordships of the Sirvy Council referring to the decision in Radha Bai v. Anant Rao, in

Note 60a

- 1 (1919) A I R 1919 Nag 52 (53) . 59 Ind Cas 473, Mahomed Strajuddin v.
 - Fayaruddin.

 (1918) 18 Ind Cas 811 (813) (All) Gangasahai v. Kanhaiya Lal. (Mortgage by midow with possession—If reversioner attacked the mortgage as invalid he should have, under Art. 144, and within 12 years of the widow's
 - death)
 (1892) 1892 All W N 26 (27), Murls v. Brsj Lal. (Transfer by occupancy
 tenant entitled only to be in possession for life)
 - (1925) A I R 1925 Oath 897 (393); 81 Ind Cas 237: 27 Outh Cas 301, Maha-bir Prasad v. Ram Kumar. (Salo by grove-holder Subsequent relinquishment in favour of landlord—Suit by laudlord to recover possession.)
 - (1912) 16 Ind Cas 865 (367): 40 Cal 173, Prosonna Kumar Mockergee v. Sri-Lantha Hay (Ghatwal relinguishing his office after sale of his interest.)
- 2 (1932) A I R 1932 Lah 45 (46): 131 Ind Cas 97, Mehar Rhan v. Sakhi Mahomed.

Note 61

- (1923) A I R 1923 P C 205 (210); 47 Born 793: 50 Ind App 255: 74 Ind Cas 862 (P C)
- 2. (1895) 9 Bom 193 (212) (Γ B), Radhabas v. Anantrav Bhagcant.
- (1898) 1898 Bom P J 30, Ramgauda Hirgauda v. Gopal Sadashiv.
 - [See also (1895) 10 Bom 34 (41), Jamel Saheb v. Murgaya Swami. (Assumed.)
 - (1888) 1898 Bom P J 46, Lingangarda v. Chengarda. (Do)
 - (1913) 17 Ind Cas 170 (171) 37 Dom 61, Shivram Narsingrao v. Mahadet Narayan. (Do)
 - [1866] 4 Bom H O R App Cas 51 [51], M.S. Sinde v. G. P. Sinde. (Do.) (1909) 4 Ind Cas 249 [230] · 34 Bom-01, Narannha Krishnajs v. Vaman Venka'esh. (Joint watandars alienating — Limitation commences after death of toth)
 - (1905) 7 Bom L R 135 (136), Rama v. Shamrao. (Do.)]
- 8. (1923) A 1 R 1923 P C 205 (210) , 47 Hom 795 ; 50 Ind App 255 ; 74 Ind Cas 862 (P C)
- 4 (1585) 9 Bom 195 (212) (F B)

which a Full Bench had held that a stranger to the water can acquire Arts, 142 & 144 the property by adverse possessing, abserved as follows:

Notes 61-618

"It is not necessary for their Lordships to decide in this case whether the answer of the Full Bench, limited as it must have been to the case of a stranger to the watan, setting up as a defence twelve years' adverse possessing, was or was not correct. although they are constrained to say that it is somewhat difficult to see how a stranger to a matan can acquire a title by adverse possession for twelve years of lands the alienation of which was, in the interests of the State, prohibited."

Subsequent to the decision of the Privy Council above referred to, the Bombay High Court has, however, held that their Lordships of the Privy Council could not be considered to have overruled the decision of the Full Bench in Radha Bas v. Anant Rao, and that the decisions which had held that watan property could be acquired by adverse possession for the statutory period must still be considered good law.6 It has been held by the High Court of Madras, on the other hand, that property attached to a service mam cannot be acquired by adverse possession? According to the Patna High Court, a right of occupancy cannot be acquired in lands granted on police service tenure, by adverse possession for any length of time

Where, however, land is not attached to an office, in the sense in which lands granted to performance of a religious service in a temple are attached to a service, but has been granted for service, it becomes the hereditary property of the granteo. The conditions restraining alienation in such cases apply only as between him and the Crown Such land may be acquired by adverse possession 9

61a. Adverse possession of land in military cantonments. - It has been held in the undermentioned cases that lands in

- 5, (1885) 9 Bom 198 (212) (F B)
- 6. (1931) A I R 1931 Bom 24 (28) 55 Bom 21 129 Ind Gas 145, Tuka Lakhu v Ganu Vithu
- (1932) A I R 1932 Bom 464 (466) 139 Ind Cas 223, Swamirae v. Bhimabai 7. (1935) A I R 1935 Mad 914 (916) 161 Ind Cas 447 59 Mad 51, Ramalingam
- s. Veerabhadradu 8 (1928) A I R 1928 Pat 603 (607) 7 Pat 566 109 Ind Cas 297, Weta Dusadh v .tnu Mahto.
- 9 (1917) A I R 1917 Mad 947 (947) 34 Ind Ct. 899, Dinarahi Lukshmipati v Pangala Narasimham
- (See also (1920) A I R 1920 Lah 209 (210) 55 Ind Cas 835, Ghulam Mahamed v. Ahmad Khan (Where a person holds adversely linds granted in perpetuity to an all lambarder, the possession is adverse to the all limbarder in esse and in posse and bars the title of the litter after the lipse of 12 ieurs)
 - (1934) 40 Mad L W 29 (29) (8 N) (The period of time for acquiring a title by adverse possession to a Barber Service Inam when the Government is not a party is 12 years and not 60 years)]

Nota 61a

1. (1922) A I R 1922 All 57 (59) 66 Ind Cas 582, Secretary of State v. Mulla. (1911) 12 Ind Cas 117 (119) 88 Ind App 201 (216) 86 Bom 1 (P C) Kaskhusru Aderyi v Secretary of State

Arts. 142 & 144 Notes 61a – 62 military cantonment area cannot he acquired by adverse possession. This view seems to be based on the general principle that a person cannot prescribe against a statute, that is to say, that where certain acts are prohibited to be done by statute, a person cannot by proof of such acts acquire a right by prescription. The only position open to a person occupying land in cantonments which has not been specifically transferred by the Secretary of State, is the position of a licensee. It is not open to him to exercise acts of ownership, and consequently, he cannot acquire by such acts any right by adverse possession.³

- 6th. Adverse possession of rights not recognised by law.—
 It is of the essence of a title by adverse possession that the right
 sought to be acquired must be one recognised by law. Where a
 person claimed by adverse possession a title to hold land as "a
 recognised subdivision" of a bhag or share in narwa governed by the
 Bombay Bhagdari and Narwadari Act, 5 of 1862, it was beld by the
 Bigh Court of Bombay that no such title was recognised by the law
 and that consequently no such title can be acquired by adverse
 possession. A joint tenancy with rights of survivorship is recognised
 in Hindu law only in a coparenary between members of an
 undivided Hindu family, and not in other cases. Such a status cannot
 therefore he acquired by adverse possession by a stranger to the
 family. Similarly, a right of Sherry hy a person as a member of the
 public to fish in a non-tidal river is not recognised by law, and
 cannot therefore be acquired by adverse possession.
- 62. Possession of owner, if can be adverse to himself.—
 Normally a person cannot preserrhe with regard to his own property.\texts.
 But, under certain circumstances, the possession of a person may be adverse to himself. Thus, where A is in possession of his own land, but under a lease from B under the wrong impression that it belongs to B who asserts a title thereto, A's possession would be B's possession and consequently adverse to A. In Secretary of State v. Krishnamoni Gupta,' in which the facts were as stated above, their Lordships of the Privy Conneil nberver-das follows:

(1910) 8 Ind Cas 1096 (1007, 1098) (All), Bank of Upper India v. Secretary

Note 62

of State.
2. (1891) 99 W R (Eng) Digest Col. 253, Trailt v. M'Allister.

^{3. (1922)} A I R 1922 All 57 (59) : 66 Ind Cas 582, Secretary of State v. Mulla.

Note 51b 1 (1904) 28 Bom 399 (407) : 6 Bom L R 428, Jethabhas v. Nathabhas. (4 Bom L R 707, Relied on)

^{2 (1923)} A I R 1923 Mad II (11): 70 Ind Cas 653, Rajambal Ammal v. Shan-muga Mudahar.

^{3. (1891) 2} Ch 678 (696) . 65 L T 175, Smith v. Andrews.

^{1. (1936) 163} Ind Cas 347 (349) (Cal), Sarafuddin Nur Ahmad v. Jibannessa Khalcon

^{2 (1002) 29 1}nd App 104 (114) 29 Cal 519 : 4 Pom L R 537 : 6 Cal W N 617 : 8 Sar 269 (P C)

"It may, at first sight, seem singular that parties should be Arts. 142 & 144. barred by lapse of time during which they were in physical possession and estopped from disputing the title of the Government (who was the adverse possessor in the case). But there is no doubt that the possession of the tenant is, in law, the possession of the landlord or superior proprietor and it can make no difference whether the tenant be one who might claim adversely to his landlord or not "

Notes 62-63

Where A and B were co-owners of a certain property, and both of them were dispossessed by a third marty, and subsequent thereto, one of the co-owners, A, came into possession of the propertyunder a lease granted by the adverse possessor and so remained in possession for more than 12 years, it was held by the High Court of Calcutta that the title of both A and B was extinguished, masmuch as the possession which A acquired must be referred to the title which A acquired under the lease and not to his title as co-owner of the property 3 A. B and C were point owners of certain property. A usufructuarily mortgaged the whole property to X as his selfacquired property Subsequently, X purchased C's share in the property. More than 12 years after the nurchase but within 12 years after the redemption of the mortgage by A's heirs, X sued for possession of the one-third share purchased by him It was held that the suit was barred, even though X was in possession of the share purchased from C. The reason is that X's possession during his mortgage of A was only that of A, even though he had purchased a share of the property from C It was therefore adverse to both B and C even from the date of the mortgage

63. Possession must be continuous for the statutory period .- Adverse possession, in order to confer title to the property on the possessor, must be continuous for the statutory period 1 This does not mean that proof of acts of possession must cover every

Note 63

^{3 (1921)} A I R 1921 Cal 616 (617) 85 Cal L Jour 164 (165) 64 Ind Cas 553, Bhola Nath De v Golabda Sardar, (Where a person holds a property adversely to both co-owners and one of them obtains possession under a lease granted by the adverse powessor and continues in powersion for over 12 years, the title of the other co-owner is extinguished as the former's possession must be referred to his title under the lease

^{4 (1857) 14} Cal 674 (678), Nundo Lal Addy . Jodn Nath Haldar

^{1 (1938) 42} Cal W N 1209 (1210), Bhabaus Prasanna . Manindra Chandra.

⁽¹⁹²⁰⁾ A I R 1920 Oudh 215 (216) 57 Ind Cas 538, Dan Bahadur Smith v Purthipal Smah

^{(1911) 11} Ind C to 185 (186) (Cal), Shookoor Mallil v. Inhara Lal (1866) 3 Mad H C R 99 (101), Goundan Pillat . Chidambara Pillat

^{(1870) 2} N W P H C R 16 (17, 16), Il ahecorditen v Jhun pore (1934) A I R 1934 Pat 485 (489) 154 Ind C to 1032, Mr Pharichina Knars

v Ramyad Knar. (1918) A I R 1918 All 102 (104) 40 All 461 44 Ind Cas 20 Det: Francis v Badri Prasad

⁽¹⁹²³⁾ A I R 1923 Lah 35 (36) O Ind Cas 363, Lam Das v Chandi

Notes 63 - 64

Arts. 142 & 144 moment of the requisitn period.2 "The fact of possession may be continuous though the several acts of possession are at considerable intervals. How many acts will infer this fact is a question of proof and presumption, independent of prescription."3

> Where an awner is ooce shown to have been in possession, the presumption may be drawn under S. 114 of the Evidence Act that it continued till it is showe to have been interrupted. But, where a person is shown to have heep in possession at a certain time and subsequently, there is no presumption that he must have been in possession before that date. The presumption of continuity is prosnective rather than retrospective.5

> 64. Break in adverse possession, effect of. - As has been seen already, it is necessary in order to acquire a title by adverso nossession that the possession of the wrongdoer must be continuous for the prescribed period of limitation. It follows that where there is a break in the adverse possession of the wrougdoer, limitation ceases to run against the lawful nwner of the proporty.2 The leading case on the point is Trustees, Executors, & Agency Co. v. Short.3 In that case their Lordships of the Privy Council observed as follows:

"They are of opinion that if a person enters upon the land of another and holds possession for a time, and then, without baying acquired a title under the statute, abandons possession, tha rightful owner, on the abandonment, is in the cama position in all respects as he was before the intrusion took place. Thera is no one against whom he can bring an action. Ha cannot

2. (1934) A I R 1931 P O 23 (25): 147 Ind Cas 545: 61 Ind App 78: 61 Cal 262 (P C), Secretary 97. Surendra

(1935) 62 Cal L Jour 177 Kumar Roy Chowdl

· Prasanna v. (1935) A I R 1935 Cal 760 , Manundra Chandra.

3. Millar on Pre-cription page 36 cited in A I R 1931 P C 23 (25). (1938) 42 Cal W N 1209 (1210 & 1211), Dhabans Prasanna v. Manindra

Chandra. 4. (1914) 21 Ind Cas 818 (818) . 7 Sind L R 169, Secretary of State v. Mush.

taksingh. 5. (1927) A 1 R 1927 Nag 37 (37) : 97 Ind Cas 1006, Tukaram Bairrao v. Tubaram Yeshwant.

Note 64

1. (1920) A 1 R 1920 Cal 289 (289) ; 57 Ind Cas 716, Pyars Deyee Debi v. Sakir Mandal.

(1931) A 1 R 1934 Pat 495 (499) : 151 Ind Cas 1932, Mt. Dharachhna Kuari v. Ramyad Kuar,

2. (1931) A 1 R 1931 Pat 485 (189), Mt. Dharichhna Kuari v. Ramyad Kuar.

(1925) A 1 B 1925 Cal 991 (9-3) : 85 Ind Cas 591, Abboy Sankar v. Salvendra Prasanna. (There can be no continuance of adverse possession when the land is not captille of use and enjoyment, so long as such adverse possession must rest on de facto use and occupation. The real owner does not discontinue his possession so long as the land is diluvistol 1

(1935) A 1 It 1938 Sind 132 (140) : 176 Ind Cas 549. Tahilram Tacichand v. v. Mt. Mural Jamalshah

3. (1899) S7 W R (1'mg) 433 (494) : 13 A C 793 , 58 L J P C 4 : 59 L T 677 : 53 J 1. 137

Note 64

make an entry on himself. There is no positive enactment, Arts. 142 & 144 nor is there any principle of law, which requires him to do any act, to issue any notice, or to perform any ceremony in order to rehabilitate himself. No new doparture is necessary. The possession of the intruder, ineffectual for the purpose of transferring title, ceases upon its abandonment to be effectual for any purpose. It does not leave behind it any cloud on the title of the rightful owner, or any secret process at work for the possible benefit in timo to come of some casual interloner or lucky vagrant

"There is not, in their Lordships' opinion, any analogy between the case supposed and the case of successive disabilities mentioned in the statute. There the statute continues to run because there is a person in possession in whose fatour it is runnina.

"There is no direct authority on the point in this country. But such authority, as there is, seems to be opposed to the doctrine laid down by the Supremo Court. It is sufficient to refer to McDonnell v McKinty, Lord St. Leonards' Real Property Statutes, page 31, and Smith v. Lloyd. In the latter case, which was decided in 1854, Parke, B., giving the judgment of the Court, says: 'We are clearly of opinion that the statute applies, not to want of actual possession by the plaintiff, but to cases where he has been out of, and another in, possession for the prescribed time. There must be both absence of possession by the person who has the right, and actual possession by another, whether adverse or not, to be protected, to hring the case within the statute. We entirely concur in the judgment of Blackburne, C. J., in McDonnell v. McKinty, and the principle on which it is founded."

"Their Lordships have only to add that, in their opinion, there is no difference in principle as regards the application of the statute between the case of mines and thm case of other land where the fact of possession is more open and notorious. . . . "

From the above it is clear that on the abandonment or relinquishment of the property by the adverse possessor, the possession automatically royests in the owner and that no act is necessary on his part to bring about such revesting. Hence, on such abandonment or relinquishment, limitation ceases to run against the true owner. 44

^{4. (1847) 10} Ir L R 514. · 5. (1854) 23 L J Ex 194 (194) : 9 Ex 562 : 2 C L R 1008 : 22 L T (o s) 239 : 96

R R 837. · 5a (1935) A I R 1935 Cal 760 (761): 159 Ind Cas 752, Bhaban: Prosanra v.

Manundra Chandra. (1917) A I R 1917 Oudh 330 (336): 19 Oudh Cas 374: 37 Inl Cas 715.

Hearsey v. Karam Singh. (1922) 65 Ind Cas 749 (752) (Oudh), Durga v. Ram Padarath. (1930) A I R 1930 Lah 303 (303) : 120 Ind Cas 792, Mangal Sinth v. Ala

^{(1905) 32} Cal 247 (291). Bholanath Singh v. Wood.

Arts. 142 & 144 Note 64

In Secretary of State v. Krishna Moni Gupta, their Lordships of the Privy Council, relying upon the case of Agency Co. v. Short above referred to, held that there was no difference in principle between the break in the continuity of possession by the voluntary ahandonment by the wrongdoer and a break in the continuity of possession caused by viz major, for example, by the submersion of the land under water and they overruled the decision of the Calcutta High Court in Kally Churn Saho v. Secretary of State.

In Basant Kumar Roy v. Secretary of State, their Lordships of the Privy Council observed that there can be no continuance of adverse possession when the land is not capable of use and enjoyment, as where the land is submerged under water, inasmuch as adverse possession must rest upon de facto use and occuration.

Where, in fact, the trespasser discontinues possession, it is immaternal whether he *intends to return or not*. The discontinuance operates as a break in the continuity without regard to the intention to return or not.*

While the defendant is in adverse possession, the plaintiff, the rightful owner, manages to onst him and obtain possession, thus interrupting the defendant'e adverse possession. The defendant obtains a decree under Section 9 of the Specific Relief Act and again dispossesses the plaintiff. The period of adverse possession of the defendant again starts only from the date of the dispossession of the plaintiff under the said decree. 19

If, before the expiry of the etatutory period, the true owner makes an effective re-entry on the property sufficient to destroy the exclusive character of the trespasser's possession, the latter's adverse possession is thereby interrupted. What constitutes such re-entry by the owner depends on the circumstances of each case. As the title rests with the true owner, acts of possession not sufficient to

- (1923) A I R 1923 Rang 23 (24): 77 Ind Cas 905: 11 Low Bur Rul 881, Kala Muthu Asara v. Meera Hussein.
- (1907) 2 Ch 533 (538): 76 L J Ch 602: 97 L T 294, Johnson v. Brock.
- (1926) A Y R 1926 Pat 130 (136, 137): 5 Pat 80: 91 Ind Cas 169, Midnapore Zamındarı Co. Lid. v. Ram Kana, Singh Dec.
- (1939) A I R 1939 Nag 7 (9, 10), 1930 Nag L Jour 418 (421), Meherban Lalls Punjara v. Yusuf Khan.
- 6. (1902) 29 Ind App 104 (116): 29 Cal 518: 4 Bom L R 537: 6 Cal W N 617: 8 Sar 269 (P C).
- 7. (1881) 6 Cal 725 (789) : 8 Cal L R 90 : 4 Shome L R 96.
- 6. (1917) A I R 1917 P C 18 (21): 44 Cal 859 : 44 Ind App 104 : 40 Ind Cas 837 (P C)
- (1935) A T R 1935 Cal 760 (762) : 159 Ind Cas 752, Bhabani Prosanna v. Manundra Chandra.
- (1905) 9 Cal W N 1061 (1064), Protab Chandra v. Durga Charan. (Dissenting from 12 Soth W R 9, 12 Soth W R 452, 22 Soth W R 259; and 12 Cal L R 486.)
- 11, (1928) A I R 1928 Cal 563 (564): 109 Ind Cas 296, Bir Bikram Kishore v. Dashrath Rishs.
 - (1928) A I R 1926 Cal 882 (665): 117 Ind Cas 693, Sourendra Nath v. Nirmal Ohandra. (Re-entry by owner against tenant of trespasser operates to destroy the adverse possession of trespasser landlord.)

Note 64

constitute adverse possession as against another may, when done Arts, 142 & 144 by the true owner, he sufficient to destroy the legal adequacy and exclusiveness of possession in a trespasser and may amount to interruption of his possession.13 But the re-entry by the true owner must be more than formal and must be effective to divest the possession of the trespasser and revest it in the owner.13 Acts such as the following are not of that character .-

- (a) The mere unjoking of the trespasser's bulls and preventing him from ploughing the land on one occasion or even the cutting away of his crops,14
- (b) The owner staying as a guest with the possessor, 15
- (c) The owner directing his steward to pull out a stone from the wall of the hut built by the trespasser and to remove a portion of the fenciog. 16
- (d) Supplying of materials by the owner for the repair of the house to the trespasser's possession.17

(1924) A I R 1924 All 844 (845) 79 Ind Cas 1047, Harnal Kurmi v. Mohan Kurmi (The owner is given delivery of possession by the Court under a decree against the trespasser-Adverse possession of the latter is interrupted, though he again re-trespasses subsequently)

12

Ind Cas

Kuare

(See also (1928) A I R 1928 Cal 563 (564) : 109 Ind Cas 296, Bir Bikram Kishore v Dashrath Rishs

(1901) 26 Bom 410 (417) 4 Bom L R 28, Vithaldas Kannishet v. Secretary of State (Plaintiff occasionally placing his boat on the land and storing material on it once. This will displace defendant's title by adverse possession)]

13 (1850) 9 C B 714 (718) 19 L J C P 306 82 R R 511, Doe d Baker v Combes, (1911) 9 Ind Cas 791 (794) 35 Mad 231, Parthasaraths Nauchen v Lahshmand Naichen (A mere transfer of his interests by the true owner will not amount to re entry)

(1911) 10 Ind Cas 863 (365) . 38 Cal 622, Joy Kals Roy v Hemangini Debi. (Registration of a name under the Land Registration Act is not necessarrly equivalent to actual possession.)

(1920) A I R 1920 Oudh 73 (74) . 55 Ind Cas 490, Chandila v. Sheoraj. (The title of a person holding land as an under-proprietor cannot be dis-turbed or destroyed by an adverse entry in the revenue papers or any orders passed by the Revenue Court refusing to enter name in the revenue papers

(1931) A I R 1931 C11 25 (26, 27) 57 Cal 796 129 Ind Cas 355, Jnanendra. narayan , Sarda Sundars Dasi (Aneutry in the Record of Rights that the land was subject to the rights of the plaintiff does not amount to a tacit recognition of the plaintiff a rights on the part of the defendant.)

(1913) 17 Ind Cas 148 (149) 37 Bom 37, Maganchand v. Velhalras. (An apple then to Assistant Collector for recovery of possession cannot stop limitation

14, (1924) A I R 1924 Cil SS4 (385) 50 Cal 978 79 Ind Cas 491, Sukur Mohammad . Asmot Mandal, (Cutting or taking away growing crop on one occasion) (1921) 1921 Mad W N 74 (s N).

15, (1923) A I R 1923 Mad 633 (634) 72 Ind Cis 635, Ammalannu v Narayanasami

16 (1850) 9 C B 714 (718) 19 LJ C P 306 82 R R 511, Dee d Eater v Comies (All this was done in the abence of the trespasser)

17. (1866) 1866 Pun Re No. 58, Churagh Shah v. Gluvera.

Arts. 142 & 144 Notes 64-65

(e) Payment of land revenue for the land. 174

It has been seen in Note 16 ante that possession to be adverse must be hostile, i. e. in denial of plaintiff's title. If, therefore, before the expiry of the statutory period, the trespasser admits the rightful owner's title, his possession ceases to be adverse. The provided that the admission relates to the property in disputely and is unequivocal. It has been held that an admission of the plaintiff's title made under a mistake of fact will not interrupt the adverse possession of the person making such admission. It

65. Dslivery of symbolical possession, if interrupts adverse possession. — The delivery of symbolical possession in execution of a decree to the decree-holder or to the auction-purchaser is, as against the defendant in the suit, equivalent to the delivery of actual possession It will follow from this that the delivery of such possession to the decree-holder or auction-purchaser will operate as a dispossession of the defendant and will put an end to the adverse possession of the defendant. In Jugobindhu Mukerjee

17a (1919) A I R 1919 Oudh 177 (177): 49 Ind Cas 61 · 21 Oudh Cas 824, Jalpa Din v. Kalka Bakhsh Singh.

 (1928) A I R 1923 Lah 317 (817): 106 Ind Cas 814, Mahomed Baksh v. Nathu.
 (But see (1922) A I R 1922 Oudh 24 (25): 06 Ind Cas 941, Abdul

Rasheed v Janahadas (Submitted not correct.)]
19 (1866) L R 1 Ex 259 (200, 261) 12 Jur (N S) 1024 14 W R (Eng) 836.

Dixon v. Baty

20. (1925) A I R 1925 Cal 193 (193) 84 Ind Cas 657, Golam Nazar v. Abbas

Molla. 21. (1937) AIR 1937 Lah 811 (612) · 177 Ind Cas 158, Amar Nath v. Ram Rakha.

Nots 65

- (1878) 19 Suth W R 101 (102): 2 Suther 750 (P 0), Gunga Gobina Mundul v. Bhoopat Chunder Biswas.
 - (1897) 19 All 499 (501): 1897 All W N 127, Mangle Prasad v. Debi Din.
 - (1906) 26 All 722 (723); 1906 All W N 213 . 3 All L Jour 504, Jagan Nath v. Milap Chand.
 - [1917] A.I. R. 1917. All S12 (312). S9. All 460: S9. Ind. Cas. 745. Rajendra.
 Kishore v. Bhaguan. Singh.
 [1928] A.I. R. 1922. All 55 (55): 70. Ind. Cas. 488. Mt. Purna. Kuer. v. Mangat.
 - Ras. (1922) A I R 1922 An 463 (465): 73 Ind Cas 920, Ram Lalan Singh v.
 - Harakh Naram Ras. (1924) A I R 1924 All 844 (845): 79 Ind Cas 1047, Harpal Kurmi v. Mohan
 - Kurm. (1926) A 1 R 1926 All 691 (692): 96 Ind Cas 591, Barjanth v. Sr. Bhagwan.
 - (1928) A I R 1928 All 412 (418) 50 All 818: 115 Ind Cas 791, Sita Ram v. Ram Sunder
 - (1931) A 1 R 1931 All 234 (235) 124 Ind Cas 767, Naranjan Lal v. Jhamman Lal.
 - (1933) A I R 1933 All 178 (175) 55 All 173: 149 Ind Cas 819, Ambika Prasad v. Sada Sheolal
 - (1936) A I R 1936 All 85 (85): 160 Ind Cas 1037, Mt. Maharaji v. Bhagwati Prasad.
 - (1897) 21 Bom 98 (101), Pandharmath v. Mahabubkhan.
 - (1900) 25 Bom 275 (279, 280) : 2 Bom L R 1021, Gopal v. Krishna Rao.
 - (1901) 25 Bom 353 (361) : 2 Bom L R 1097, Mahadeo v. Parashram.

Arts. 142 & 144 Note 65

- (1922) A I R 1922 Bom 27 {28}: 66 Ind Cas 320: 46 Bom 710, Mahadetappa Dundappa v. Bhima Deddappa.
- (1879) 4 Crl 870 (876) · 4 Cal L R 55 : 4 Ind Jnr 180, Umbila Churn Goopla v. Madhub Ghosal.
- (1881) 7 Cal 418 (420), Lokessur Koer v Purgun Roy.
- (1884) 10 Cal 993 (995), Rungit Singh v Bunnars Lal Sahu.
- . v. Purnanund Gossami.
 Baburali,
- (1880) 6 Cal L R 539 (541, 542), Mozuffer Wahrd . Abdus Samad.
- (1899) 4 Cal W N 297 (302, 303), Mt. Dapr v. Darham Deo Pershad. (1871) 15 Suth W R 307 (307, 308), 7 Beng L R App 20, Bindubashim Dass
- v. J. R. Renny (Ramey). (1914) A I R 1914 Cal 630 (630, 631) 23 Ind Cas 298, Dec Nandan Per-
- (1918) A I R 1918 Cal 500 (500, 551) 23 180 Cas 298, Deo Nandan Pershad v. Udit Narayan Singh (1918) A I R 1918 Cal 253 (255) : 46 Ind Cas 104, Satish Chandra v. Brojo
- Gopal. (1921) A I R 1921 Cal 385 (387) . 70 Ind Cas 420, Biojendra Kumar v.
- Ashutosh Roy. (1922) A I R 1922 Cal 176 (177) 70 Ind Cas 602, Janahmath Saha v. Bar-
- huntha Nath (1922) A I R 1922 Cal 313 (315), Jogendra Nath v Dinanath Dass
- (1923) A I R 1923 Cal 138 (140, 141) 77 Ind Cas 1035, Bhulu Beg v. Jotindra Nath Sen.
- (1926) A I R 1926 Cai 1172 (1173) 96 Ind Cas #81, Jogendra Krishna v Joy Shib Chaudhry (Symbolical delivery effective against transfero, transfer in whose favour is affected by doctrine of its pendens.)
- (1932) A I R 1932 Pat 145 (147); 11 Pat 165: 142 Ind Cas 216, Ram Prasad Ojha v. Bindeshwari Prasad. (Do.)
- (1927) A I R 1927 Cal 411 (418) 101 Ind Cas 622 . 54 Cal 524, Sabjan Bibs v. Asanulla Sheikh.
- (1930) A I R 1930 Cal 15 (16) 221 Ind Cas 407 56 Cal 1180, Haratit Golder v Jaladhar Bisnes (1930) A I R 1930 Cal 455 (450) 128 Ind Cas 81, Satyendra Nath Khan v.
- (1930) A I R 1930 Cal 455 (166) 128 Ind Cas 81, Satyendra Nath Rhan Panchanon Chatterjee (1882) 1882 Pun Re No 75, Mt Karsm Nessan v Basho
- (1918) A I R 1919 Lah 62 (63) 47 Ind Cas 411 · 1916 Pun Re No. 76,
- Kanan v Umar (1920) A I R 1920 Lah 30 (83) 55 Ind Cas 646, Salamat Ali v Ali Albar
- (1925) AIR 1925 Lah 61 (61, 62) . 84 Ind Cas 952, Muland Lal v. Ham
- (1926) A I R 1926 Lah 35 (37) 89 Ind Cas 596, Harbhagean . Taja.
- (1928) A I R 1928 Lah 719 (719) 108 Ind Cas 396, Eundan Lal v Gaurs Mal
- (1930) A 1 R 1930 Lah 823 (823) 126 Ind Cas 526. Surja v Mulchand (1935) A I R 1935 Lah 612 (613) 159 Ind Cas 1100 Ut Ram Kali v.
- Gouardhaulai (1886) 10 Mad 17 (19) 11 Ind Jur 18, Venhataranduna Viramma.
- (1918) A 1 R 1918 Mad 690 (593) 41 Ind Cas 167. Narayani Ammal v. Secretary of State
 - (1926) A I R 1926 Mad 42 (43) 90 Ind Cas 1037 Eanganatha Izer v. Sreniasa Iyenyar (Per Odger's, I) (1927) A I R 1927 Mad 849 (850) . 103 Ind Cas 243 Kamana v Maka-
 - lakshme (1928) A I R 1928 Mad 144 (145) 105 lud Cus 170. Langusrami Nauter v.
 - Venkstachala Nawker (1930) A TR 1930 Mad 20% (20%, 209) 122 Ind Car 164 Sethuratnam I, er v. Chuna Solan
 - (1914) A I R 1914 Nag 14 (14) 10 Na. 1 R 40 24 Ind Co. 520, In Singh v. Gamput.

Note 65

Arts. 142 & 144 v. Ramchunder Bysack,2 it was held by a Full Bench of the High Court of Calcutta, that a delivery of symbolical possession under the Code of Civil Procedure against a defendant in the suit is equivalent to the delivery of actual possession. "As against third parties, of course," axid their Lordships, "this symbolical possession, (as it is so called) would be of no avail; because they are no parties to the proceeding. But if the defendant should, after this, again dispossess the plaintiff by receiving the rents and profits, we think the plaintiff would have twelve years from such dispossession to bring another suit." The decision in Juggobundhu's case2 was approved by the Privy Council in Sri Radha Krishna Chanderji v. Ram Bahadur's and it was observed: "This decision is one of long atanding and has been followed for many years. Their Lordships see no reason to question or to hold that this rule of procedure should now be altered." A similar view was expressed in Kesho Pershad v. Mt. Bhagiogna Koer.4 One of the questions in that case was whether the taking of symbolical possession by the holder of a decree against X would have any effect on the adverse possession of Y who was not a party to the suit. Their Lordships observed: "It adds little or nothing that having got a decree he (the decree-holder) took symbolical possession (dakhal dahani) or even that he set up boundary nillars well to the north of the land now in suit. The respondents (that is Y) could not prevent his doing these things and their rights are not in any way affected by them" See also the undermentioned cases in which it was held that symbolical delivery

```
(1929) A I R 1925 Nag 293 (301) : 116 Ind Cas 70, Gaure Shankar v. Ibra-
      him Ali
```

⁽¹⁹²⁸⁾ A I R 1928 Oudh 8 (8, 9): 3 Luck 180: 105 Ind Cas 781. Als Husain v. Mahomed.

^{(1910) 8} Ind Cas 236 (238) (Lah), Amolak Shah v. Maula Baksh. v. Muhammad Hafiz. v. Sarasvatı.

[.] Chattern v. Modhu Sudan Mulern.

⁽¹⁹³⁰⁾ A I R 1930 Lah 914 (915) . 129 Ind Cas 699, Ram Chand v Gopal (1930) A I R 1930 Lah 381 (385): 120 Ind Cas 502, Sunder Das v. Maho-

med Akram Khan. [See also (1933] A I R 1933 Rang 407 (409): 12 Rang 1: 149 Ind

Cas 916, Swaminathan Padiachi v. Mona China Andi] 2. (1880) 5 Cal 584 (588) : 5 Cal L R 548 : 3 Shome L R 68 (F B).

S. (1917) A I R 1917 P C 197 (201] : 43 Ind Cas 268 (P O).

^{4. (1937)} A I R 1937 P G 69 (75) : 167 Ind Cas 329 . 16 Pat 258 : 31 Sind L R 242 (P C). [See also (1928] A J R 1923 Oudh 391 (392) : 111 Ind Cas 862 3 Luck

^{668,} Ataultah Khan v Mt. Hans Ray Kunwar.] 5. (1921) A I R 1921 All 9 (10) 48 All 520 : 63 Ind Cas 212 (F B), Jang Baha.

dur Singh v. Hanumant Singh

^{(1899) 21} All 269 (271) 1899 All W N 56, Naram Das v. Lalla Prasad. (1895) 19 Bom 620 (624, 625), Harjivan v. Shivram.

⁽¹⁹²²⁾ A I R 1922 Bom 2 (3) - 46 Bom 932 : 68 Ind Cas 91, Raghunath Vaman v Kondiba Baban

^{(1880) 5} Cal 584 (586) • 5 Cal L R 548 : 3 Shome L R 68 (F B), Juggobundhu Mukeriee v. Ramchander Busach.

of possession would not affect the rights of a third party or interrupt Arts. 142 & 144 the running of time in his favour. Note 65

There is a conflict of decisions as to whether symbolical delivery of a property in execution proceedings will interrupt the adverse possession of the defendant and furnish a fresh starting point of limitation against him in cases where the circumstances are such that actual delivery and not symbolical delivery is the prescribed mode of delivery according to the provisions of the Civil Procedure Code. One view is that symbolical delivery will give a fresh start of limitation for a suit for possession against the defendant, notwithstanding that the circumstances of the case are such that actual delivery and not symbolical delivery is the prescribed mode of delivery under the law. The other view is that symbolical delivery under the law.

(1884) 10 Cai 993 (995), Runyit Singh v. Banwars Lall Sahu. (1889) 16 Cai 890 (535) (F B), Jogobandhu Miller v. Purnanund Gossami. Pur v. Depus Behory Miller. Wazuruddin v. Lala Dooks Nandan, yan Mahomed v. Chunder Mohan

(1881) 11 Cal L R 395 (399), Doyanidhi Panda v Kelai Panda.

(1916) A I R 1916 Cal 408 (409) S2 Ind Cas 703, Sadulla Mridha v. Joynabunnessa Bibi

(1918) A I E 1918 Cal 253 (255): 46 Ind Cas 104, Satish Chandra v. Brojogopal.

(1923) A I R 1923 Cal 82 (81); 77 Ind Cas 564, Jobeda Khalun v. Tuls, Charan Das,

(1928) A I R 1923 Lah 534 (535): 77 Ind Cas 509, Muhammad Ramzan v. Municipal Committee, Aligur.

(1925) A I R 1925 Lah 61 (61) . S4 Ind Car 952, Mukand Lai v. Ilam Din.
 (1926) A I R 1926 Mad 42 (41) 90 Ind Cas 1037, Ranganatha Ayyar v.
 Srnuasa Ivenar

(1934) A I R 1934 Nag 36 (39) 30 Nag L R 294 148 Ind Cas 62, Ganpatrao v Vithaba:

(1917) A I R 1917 Oudh 195 (185) 42 Ind Cas 192, Chunn v Mt. Ashrafan.

(1929) A I R 1928 Oudh 391 (392); 111 Ind Cas 362. 3 Luck 663, Ataulia Khan v Mt. Hansraj Kunwar.

(1917) A I R 1917 Pat 423 (424) 42 Ind Cas 449, Jhan Singh v. Gop. Pasban

(1910) 5 Ind Cas 278 (275) (All), Gajadhar Ras v. Ramlakhan Ras.
(1910) 6 Ind Cas 467 (471) (Cal), Khiroda Kanta Roy v. Krishna Das.

(1911) 9 Ind Cas 271 (272) (Mad), In re Rama Moothan.

(1913) 21 Ind Cas 765 (767) (Mad), Rompicherla · Shaik Ismael [But see (1926) A I R 1926 Cal 1172 (1173) 96 Ind Cas 451, Jojendra Erishna · Joy Shio Chaudhury]

6. (1921) A I R 1921 Cal SS5 (387) 70 Ind Cas 420, Brozendra Kumar Lay v Ashutosh Lay

(1992) A I R 1922 Cal 176 (174) TO Ind Cas 602, Janaharth v Easturtha Nath (1923) A I R 1923 Cul 371 (372, 378) : 70 Ind Cas 157, Eulada Prosed v,

Kudiram Misra (1926) A I R 1926 Lab 85 (87) . 89 Ind Cas 5%, Harbhar an 1 T1 1

(1907) 17 Mrd L Jour 59- (601), Gound v Venltasauruln (1927) A I R 1927 Mrd 849 (-80) 105 Ind Ca- 243 Anna 1 v Mala-

labshim.
(1928) A I R 1923 Part 76 (82) 71 Ind Cis 999 24 Cr. L. Jour 279, "Valuaraw Partup Lau Nath Sah, De. v. San zerbas E. er.

Note 65

Arts. 142 & 144 v. Ramchunder Bysack,2 it was held by a Full Bench of the High Court of Calcutta, that a delivery of symbolical possession under the Code of Civil Procedure against a defendant in the suit is equivalent to the delivery of actual possession. "As against third parties, of course," eaid their Lordships, "this symbolical possession, (as it is so called) would be of no avail; because they are no parties to the proceeding. But if the defendant should, after this, again dispossess the plaintiff by receiving the rents and profits, we think the plaintiff would have twelve years from euch dispossession to bring another suit." The decision in Juggobundhu's case2 was approved by the Privy Council in Sri Radha Krishna Chanderii v. Ram Bahadur3 and it was observed. "This decision is one of long etanding and has been followed for many years. Their Lordships see no reason to question or to hold that this rule of procedure should now he altered." A similar view was expressed in Kesho Pershad v. Mt. Bhagiogna Koer.4 One of the questions in that case was whether the taking of eymbolical possession by the holder of a decree against X would have any effect on the adverse possession of Y who was not a party to the suit. Their Lordships observed: "It adds little or nothing that having got a decree he (the decree-holder) took symbolical possession (dakhal dahanı) or evon that he eet up houndary pillars well to the north of the land now in suit. The respondents (that is Y) could not prevent his doing these things and their rights are not in any way affected by them." See also the undermentioned cases in which it was held that symbolical delivery

```
(1929) A I R 1925 Nag 293 (301) : 116 Ind Cas 70, Gaurs Shankar v. Ibra-
     ham Als.
(1928) A I R 1928 Oudh 8 (8, 9): 3 Luck 130: 105 Ind Cas 781. Ali Husain
 v. Mahomed.
```

. . . . v. Maula Baksh. v. Muhammad Hafre. . Sarasvats.

(1918) 18 Ind Cas 'lb1 ('bz) (Cal), Girinarain Chatterii v. Modhu Sudan Muher it. (1930) A 1 R 1930 Lah 914 (915) . 129 1nd Cas 699, Ram Chand v. Gopal

Singh. (1930) A I R 1930 Lah 394 (395) : 120 Ind Cas 602, Sunder Das v. Maho-

med Ahram Khan. [See also (1933) A I R 1933 Rang 407 (409) : 12 Rang 1 . 149 Ind Cas 916, Suammathan Padrachi v. Mona China Andi]

(1880) 5 Cal 584 (588) ; 5 Cal L R 543 ; 3 Shome L R 68 (F B).

(1917) A I R 1917 P C 197 (201) : 43 Ind Cas 268 (P C).

4. (1937) A I R 1937 P C 69 (75) : 167 Ind Cas 329 : 16 Pat 258 : 31 Sind L R

[See also (1928) A 1 R 1928 Oudh 391 (392) : 111 Ind Cas 362, 3 Luck 668, Atauliah Khan v. Mt Hans Raj Kunwar.] 5. (1921) A I R 1921 AH 9 (10) 43 AH 520 : 63 1nd Cas 212 (F B), Jang Baka-

dur Singh v. Hanumant Singh as v. Lalta Prasad.

nd Cas 91, Raghunath

(1880) 5 Cal 584 (586): 5 Cal L R 548 : 3 Shome L R 68 (F B), Juggobundhu Mukerjee v. Ramchander Busach.

of possession would not affect the rights of a third party or interrupt Arts. 142 & 144 Note 65 the running of time in his favour.

There is a conflict of decisions as to whether symbolical delivery of a property in execution proceedings will interrupt the adverse possession of the defendant and farnish a fresh starting point of limitation against him in cases where the circumstances are such that actual delivery and not symbolical delivery is the prescribed mode of delivery according to the provisions of the Civil Procedure Code. One view is that symbolical delivery will give a fresh start of limitation for a suit for possession against the defendant, notwithstanding that the circumstances of the case are such that actual delivery and not symbolical delivery is the prescribed mode of delivery under the law. The other view is that symbolical delivery

```
(1884) 10 Cal 993 (995), Runfit Singh v. Dunwari Lall Sahu.
(1889) 16 Cal 530 (533) (F B), Jogobundhu Metter v. Purnanund Gossami.
(1891) 18 Cal 520 (525), Gossam Dalmor Purs v. Depin Behary Mitter.
(1907) 6 Cal L Jour 472 (182, 483), Mar Wazıruddin v. Lala Decki Nandan.
(1908) 7 Cal L Jour 640 (643), Rampan Mahomed v. Chunder Mohan
      Aditya.
(1881) 11 Cal L R 895 (395), Doyanidhi Panda v. Kelai Panda.
 (1916) A I R 1916 Cal 408 (409) 32 Ind Cas 703. Sadulla Mridha v Jouna-
       bunnessa Bibi.
 (1918) A I R 1918 Cal 253 (255) . 46 Ind Cas 104. Saish Chandra v. Brojo-
 (1928) A I R 1928 Cal 82 (84): 77 Ind Cas 564, Joheda Khatun v. Tulsi
      Charan Das.
(1923) AIR 1923 Lah 534 (535): 77 Ind Cas 509, Muhammad Ramzan v.
Municipal Committee, Alipur.
 (1925) A I R 1925 Lah 61 (61) . 64 Ind Cas 952. Makand Lal v. Ilam Din.
 (1926) A I R 1926 Mad 42 (44) . 90 Ind Cas 1037, Ranganatha Ayyar v.
       Srinicasa Lyengar
 (1934) A I R 1934 Nag 36 (39) 30 Nag L R 281 148 Ind Cas 62, Ganpatrao
       v Vithabas
 (1917) A I R 1917 Oudh 135 (135): 42 Ind Cas 192, Chunn v Mt. Ash-
       rafan.
 (1928) A I R 1928 Oudh 391 (392) · 111 Ind Cas 362 · 3 Luck 668, Ataulla
        Khan v. Mt Hansray Kunwar.
 (1917) A I R 1917 Pat 423 (424) . 43 Ind Cas 449, Jhars Singh v. Gops
       Pasban.
  d':
        1.0
                        ., 6
            . . .
         1
  i. . . . .
        [But see (1926) A I R 1926 Cal 1172 (1173) . 96 Ind Cas 481, Jogendra
             Krishna . Joy Shib Chaudhury ]
6. (1921) A I R 1921 Cal 355 (387) : 70 Ind Cas 420, Brojendra Kumar Roy v
        .1shutosh Roy.
  (1922) A I R 1922 Cal 176 (178) TO Ind Cas 602, Janakinath v Baikuntha
```

Jaha. lakshrii (1928) A I R 1923 Prt 76 (82) 71 Ind Cas 999 24 Crs L Jour 279, Makeraja Partap I das Natl Sals Dea . Sur derbans Koer,

(1923) A I R 1923 Cal 371 (372, 373) . 70 Ind Cas 187, Eulada Prosad v.

Nath

Kudiram Misra.

Note 65

Arts. 142 & 144 is totally ineffective in such cases and will not interrunt the adverse possession of the defendant.7

> Similarly, there is a conflict of decisions as to whether a formal defect in the proceeding constituting the symbolical delivery will make it ineffective to arrest the adverse possession of the defendant. one view being that the adverse possession will not be interrupted in such cases, 8 the other view being that the adverse possession will be interrupted.9

> As seen above, symbolical delivery is conjugatent to actual delivery in the eve of the law, as against the defendant. Where the land of which symbolical delivery is made is in the occupation of ryots, the plaintiff, sping for possession, will have a period of twelve years from the date when the defendant again dispossesses him by collecting the rents and profits of the land from the ryots,10 But where the land is in the actual possession of the defendant and he continues in such possession after the eymholical delivery, he should be held to dispossess the plaintiff immediately on the symbolical delivery and the plaintiff must bring his suit for actual possession within twelve years of such delivery.11

- 7. (1919) A I R 1919 Bom 44 (44) : 43 Bom 559 : 51 Ind Cas 72. Shridar ve Ganpati.
 - (1922) A I R 1922 Bom 2 (3) : 46 Bom 932 · 68 Ind Cas 91, Raghunath Vaman v. Kondiba Babaji.
 - (1924) A 1 R 1924 Lah 301 (302) . 71 Ind Cas 385, Sardar Rhan v. Abdulla Khan.
 - (1937) A I R 1937 Lab 350 (351): 174 Ind Cas 821, Mt. Khairan v. Raghbir Singh.
 - (1925) A I R 1925 Mad 1140 (1141) : 86 Ind Cas 489, Kammayya v. Bhimara Settee Paridesi. 'v. Bala Khandu.

1226. af Als.

- 8 (1935) A I R 1935 Lah 612 (613) : 159 Ind Cas 1100, Mt. Ram Kali v. Gowardhan Lal.
 - (1986) A I R 1936 Lah 749 (750) : 166 Ind Cas 377, Bhanat Ram v. Als Baksh.
- 9 (1927) A I R 1927 Lah 186 (186): 101 Ind Cas 254, Abbas Ali Ehan v. Yusuf Ali Khan. (1929) A I R 1929 Lah 545 (545): 118 Ind Cas 391, Harnam Smgh v. Melkhi
 - Ram. (1933) A I R 1933 Lah 427 (428): 145 Ind Cas 345, Harnam Singh v. Ganda
- Singh. (1880) 5 Cal 564 (598) : 5 Cal L R 548 : 3 Shome L R 69 (FB), Juggobundhu
- Muler see v. Ramchunder Bysack.
- 11. (1931) A I R 1931 All 231 (235): 124 Ind Cas 767, Naranjan Lal v. Jhamman Lal (1929) A I R 1928 All 412 (413) . 50 All 813 . 115 Ind Cas 791, Sitaram v.
 - Ram Sunder. (1903) 8 Cal W N 49 (51), Hassan Raja Chaudhry v. Kailas Chandra
 - Singha (1904) 9 Csl W N 292 (299), Bagdu Majhi v. Rajah Sri Srs Durga Prosad
 - Singha. (1914) A I R 1914 Cal 630 (630) : 23 Ind Cas 299, Deo Nandan Pershad v. Udit Narayan Singh.
 - (1936) A 1 R 1936 Pesh 7 (8): 160 Ind Cas 441, Mt. Jan Sultan v. Abdul Manan.

Where the transferee under an invalid alienation of land which Arts. 142 & 144 is in the occupation of rvots obtains a decree for possession against the vendor and is given symbolical delivery of possession, the transferce will be deemed to be in adverse possession against the vendor from the date of such delivery, unless the judgment-debtor, in spite of such delivery, continues to collect the rents and profits from the rvots.12

Symbolical delivery has the effect only of giving a fresh starting point of limitation for a suit for possession against the defendant who is in adverse possession. Such delivery does not, however, put an end to the title which the defendant acquires by prescription under Section 28 by virtue of his adverse possession for twelve years. In other words, where at the date of the symbolical delivory the defendant has already perfected his title to the property by adverse possession, such title is in no way affected by the symbolical delivery and a suit for possession will be barred although within twelve years of such delivery.13

The above principles will apply to sales for arrears of revenue, so that, where, under such sales, the auction purchaser is given symbolical possession, he can bring his suit for actual possession against the defaulting proprietor at any time within twelve years of such symbolical delivery of possession, 14

66. Decree does not interrupt adverse possession. - X obtained a decree for money against A who was a trustee in respect of certain properties. A's son subsequently instituted a suit to establish that the property belonged to the trust. While the suit was pending, the property was sold in execution of X's decree in 1898 and was purchased by one M who obtained possession thereof. It was subsequently decided in the suit filed by A's son that the property belonged to the trust A's sons filed a suit against M in 1913 for possession of the property on the ground that it was trust property. It was beld that the suit was barred. Their Lordships of the Privy Council observed as follows .

"At the moment when it (the decree in A's son's suit) was passed, the possession of the purchaser was adverse, and the

Notes 65-66

⁽Sec (1900) 2 Bom L R 407 (409), Sitaram . Naro] (But see (1919) 2 Lah L Jour 91 (98), Ali Bakhsh v Mt Ghuam

^{12 (1915)} A I R 1915 Mad 145 (147) 26 Ind Cas 537, Gounda Doss v Rajan Venhata Perumai. (Sec (1926) A I R 1926 Oudh 444 (446) 95 Ind Cas 27 2 Luck 23),

Parkaslas v. Janks Ballabha Saran] 18 (1925) A I R 1925 Oudh 20 (23) 54 Ind Cas 98, Mt Mahmudunnisa v.

Zahid Raza, 14 (1917) A I R 1917 Cal 199 (201) 37 Ind Cas 239, Jetendra Kumar \ Mohendra Chandra

⁽¹⁹¹⁷⁾ A I R 1917 Cal 218 (216) 39 Ind Cas 213 44 Cal 412, Mehira Chandra v Pyari Lal.

⁽¹⁹⁹⁸⁾ A I R 1978 Cal 870 (872) 115 Ind Cac 606, I am unth Nath v Sher a Azululia.

Arts, 142 & 144 Note 66

declaration that the property had been properly made subject to a trust disposition and therefore ought not to have been seized, did not disturb or affect the quality of his possession; it merely emphasised the fact that it was adverse. No further step was taken in consequence of that declaration until the present proceedings were instituted, when it was too late."1

See also the undermentioned cases2 holding the same view, viz. that a mere decree establishing the right of the plaintiff to possession does not interrupt the adverse possession of the plaintiff. In Singaravelu v. Chokka Mudaliar.3 Venkatasubha Rao, J., of the Madras High Court observed as follows: "Adverse possession is a question of fact and always implies that the right to immediate possession subsists in the true owner and not in the person having adverse possession. An admidication that the true owner had a good title to possession is entirely consistent with the fact that the actual posses. sion is with another party who ousted the true owner and has heen holding possession as against the true owner on his own behalf. I therefore fail to see how a decree which negatived the first defendant's right could possibly be regarded in the nature of an interruption of the continuity of possession."

Note 66

- (1928) A I R 1923 P C 175 (176, 177): 50 Ind App 295 · 46 Mad 751: 74 Ind Cas 492 (P C), Subbanya Pandaram v. Md. Mustafa Marakayar.
- 2, (1937) I L R (1937) 2 Cal 234 (240), Bijay Goyal v. Gopee Das (Declaratory decree does not interrupt adverse possession.)
 - (1876) 25 Suth W R 249 (250), Mulbool Ali v. Wajed Hossein. (Do.)
 - (1923) A I R 1928 Mad 88 (91) : 46 Mad 525 : 70 Ind Cas 994, Sincarately Mudaliar v. Chokka Mudaliar. (Do.)
 - (1911) 9 Ind Cas 795 (795, 796) (Mad), Puthia Valapil Ayissa v. Lakshmana Probhu. (Do)
 - (1910) 8 Ind Cas 883 (891) (Mad), Raghunathathachariar v. Tiruiengada Ramanujacharya (Do.)
 - (1936) A I R 1936 All 466 (467) : 163 Ind Cas 545, Mahomed Tahir v. Bechey Lal. (Do)
 - (1930) A I R 1930 Lah 472 (474) , 129 Ind Cas 703, Jamin Das v. Phulla
 - (1930) A I R 1930 Lah 297 (299) · 120 Iad Cas 486, Mahomed Ibrahim v. Shaida Muhammad. (Do).
 - (1937) A I R 1937 Lah 602 (606, 607); I L R (1937) Lah 255; 172 Ind Cas
 - 253, Har Indar Singh v. Shiv Ram. (Do.) (1926) 99 Ind Cas 956 (957) : 8 Lab L Jour 572 (575), Alla Bakhsh v. Shadi
 - (Do.) (1872) 17 Suth W R 119 (120): 8 Beng L R 510, Amiroonissa Begum v.
 - Umar Khan. (Decree for possession.) (1926) 98 Ind Cas 827 (828) (All), Dalle v. Amira, (Do)

 - (1672) 17 Suth W R 450 (451), Kalee Kishore Sen v. Nilamber Sen. (Do.) (1922) A I R 1922 Lah 70 (71) · 64 Ind Cas 352, Fazal v. Mshan Khan.
 - (Do) (1930) A I R 1930 Bom 400 (400) : 129 Ind Cas 338, Mulchand v. Hirabai,
 - (1939) A I R 1939 Bom I (18) . 179 Ind Cas 178, Narayan Jugan v. Guru.
 - nathgouda. (Do). 3. (1923) A I R 1923 Mad 88 (91): 46 Mad 525: 70 Ind Cas 994. (Dissenting from A I R 1920 Bom 61)

In some decisions' it has been held that a decree in favour of Arts. 142 & 144 the plaintiff will interrupt the adverse possession of the defendant. It is submitted that this view is not correct. But, where the plaintiff obtains possession under a decree, the defendant's adverse possession will be interrupted although the decree is reversed on appeal and possession is restored to the defendant on such reversal.

Notes 66-67

In the undermentioned case,6 a third party obtained a decree for possession against the defendant and obtained possession in execution of such decree. The decree was reversed on appeal and possession was restored to the defendant. It was held that the defendant's adverse possession against the plaintiff was not interrupted by the third party's possession. It is submitted that the decision is not correct, masmuch as the Statute requires actual possession on the part of the defendant for the statutory period in order to create a title by prescription in his favour and mern absence of possession on the part of the plaintiff is not enough.

In a suit for possession of land which was in the actual occupation of third parties, viz raivats, it was held that a former decree nbtained by the plaintiff against the largats for lent showed that at the date of the decree the plaintiff was in possession as landlord and that therefore the decree saved the suit from limitation?

- 67. Effect of attachment on adverse possession. An attachment of immovable property under the Civil Procedure Code does not affect the possession of the property. Hence, such attachment does not interrupt the adverse possession of the property 1 But, where on an attachment a claim petition is filed by the adverse possessor and rejected and he does not institute a suit within one
 - 4 (1833) 5 All 345 (354) 1883 All W N 81 (F B), Sarsuts v Kung Behars Lal (1993) A IR 1932 Sind 35 (88) 20 Sind L R 127 140 Ind Cas 228, Gagu-mal Metharam Allahbur (Decree for possession and owner-hip breaks continuity of possession of defendant)
 - (1920) A I R 1920 Born 61 (61) 44 Dom 931 58 Ind Cas 96, Abba 4h Meer Inagatalla 1. Abdul Agiz Mer Saheb Jahagirdar. (Decree for possession)
 - (1921) A I R 1921 Bom 470 (470) 45 Bom 913 61 Ind Cas 414, Rukhmabas v. Ramchandra Vasuder (Do)
 - (1934) A I R 1934 Born 273 (276) 58 Born 410 154 Ind Cas S24, fear, Ganpats v Vishnu Rambhau (Do)
 - (1892) 2 Mad L Jour 210 (217) Bapayes v Basmish (When the tenants under X are in possession and the plaintiff's little to the land is declared in a suit against X, a suit by the plaintiff trought within 12 years of such declaration held not barred, as the tenant a pos-e-ston is the possersion of A)
 - 5. (1917) A I R 1917 Mad 6-3 (691) 35 Ind Cas 421, Larmirathaya v Paritchand, a
 - 6. (1898) 22 Bom 733 (736). Dardu v Kalu.
 - 7 (1914) A I R 1914 Cal 630 (631) 23 Ind Cis 298, Dec No dan Percel v Udit Narayan Sir al.

Note 67

1. (1901) 11 Mad I, Jour 344 (345), Seetharami R. ddi v Ver 'n Perin When a trespasser is holding the property adversely to t e war the a" whment of the properly by a person who has go a do re aga as the owner, does not treat the tier og at me a it of the tours or)

year (under Article 11 ante) to establish his right (see Civil Procedure Code, Order 21 Rale 63), it has been held that he will be precluded from pleading that he was in adverse possession on the date of the order dismissing his claim petition. But he will not be precluded from pleading that his possession has been adverse from the date of the order rejecting his claim. Further, where the attachment is raised subsequently, the adverse order on the claim petition ceases to be effective and the adverse possessor is not precluded from contending that he was in possession on the date of the order, although he has not questioned the order by means of a suit within one year under Article 11,24

An attachment of property under Sections 145 and 146, Criminal Procedure Code, is effected by the Magistrato actually taking possession of the property because it cannot be said that such attachment does not affect the possession of the property. Such possession, however, enures to the benefit of the party in actual possession at the date of the proceedings if the attachment is under Section 145, and to the benefit of the party lawfully entitled to the property if the attachment is made under S. 146. Hence, where the property is in the possession of a trespasser and is attached under Section 145, Criminal Procedure Code, the attachment does not interrupt the possession of the trespasser. But, where the attachment is under Section 146, the possession of the trespasser will be interrupted, inasmuch as the possession of the Court during the attachment will be one on behalf of the true owner.

On the same reasoning, where the possession is with the true owner at the date of the attachment under Section 146, the attachment does not amount to a dispossession of the true owner. § a

Subbiah.

⁽¹⁹²⁶⁾ A I R 1926 Mad 42 (48): 90 Ind Cas 1087, Ranganath Iyer v. Sri-nivasa Iyengar.

^{(1860) 4} Mad H C R 281 (285), Krishnama Rajah v. Narayanasamy Rajah.
(1937) A I R 1937 Mad 44 (46). 166 Ind Cas 308, Dharapuram Janopakara Nidhi. Ltd v. Lakshminarawana Chettar.

⁽¹⁹²⁶⁾ A I R 1926 Ondh 43 (43) · 80 Ind Cas 424, Harkishan Das v. Mt. Sundro Bibi

^{2. (1885) 8} Mad 506 (510), Velayuthan v. Lakshmana.

 ⁽¹⁹³⁷⁾ A I R 1937 Mad 44 (46): 166 Ind Cas 308, Dharapuram Janopakara Nidhi Ltd. v. Lakshminarayana Chettiar.

³a (1937) A I R 1937 Mad 44 (46): 166 Ind Cas 308, Dharapuram Janopakara Nidhi Lid, v. Lakshminarayana Chettiar.

Sb See Notes under Sections I45 and I46 of the Authors' Code of Criminal Procedure

⁴ See (1926) A I R 1926 Cal 782 (786) . 95 Ind Cas 117, Abinash Chandra v. Tarini Charan.

^{5 (1921)} A I R 1921 Cal 594 (586) - 66 Ind Cas 433, Sarat Chandra v. Bibha-balt Debt.

⁽¹⁹²²⁾ A I R 1922 Cal 419 (421) : 49 Cal 544 . 65 Ind Cas 200, Panna Lal v. Panchu Rusdas 5a (1916) A I R 1916 Cal 751 (752, 753) - 31 Ind Cas 242, Brojendra Kuthore

Roy v. Bharat Chandra Roy. (1902) 26 Mad 410 (413, 414, 415), Rayah of Venhatagirs v. Isahapalli

Where property is under attachment under Section 146, Criminal Arts. 142 & 144 Procedure Code, the remedy of the true owner is by a suit for Notes 67-68 declaration of title and not for possession, as the property must be deemed to be only in the possession of the true numer during such attachment. Hence, although the true nwner may frame his suit as one for possession, it must be treated as one for declaration of title and will not be governed by Article 142 or Article 144 as the case may be.6

See also the undermentioned cases?

68. Decision of Revenue Officer or Court regarding houndary, if interrupts adverse possession. - A decision of the Revenue authorities as to the houndaries of lands cannot have the effect of dispossessing as a fact any party who is in possession, and cannot constitute an interruption of possession. In Kuppusams v Venkata. sami, a case under the Madras Surveys and Bonndaries Act, 1897, . Mr. Justice Ramesam negatived the contention based on a decision of the Full Bench in Muthiruland: Poosars v. Sethurama Iver.2 that the decision of a Survey Officer as regards boundaries interrupted the adverse possession of the party in possession at the date of the decision He held that the Full Bench did not decide the question In Azhaga Perumal Pillai v Rasa Pillai,3 a Bench of the High Court of Madras observed as follows:

"Neither the decision of the Survey Officer nor the planting of stones in accordance with it in proceedings under the Act apso facto dispossesses any party, nor could it make a legal break in existing possession so as to render ineffective, for purposes of limitation, any adverse possession running at its date We do not agree with Mr. Ramachandra Iyer that that is the effect of the opinion of the Full Bench in Muthirulandi Poosari v Sethurama Iver * Our view on this point is supported by the opinion of Rainesam. J., in Kuppusami Tyer v Venlata. same,5 and that of Benson and Krishnasami Iver, JJ., in S A No. 1102 of 1909 It would be very extraordinary if the Survey

6. (1922) A I R 1922 Cal 419 (421) 65 Ind Cas 200 49 Cal 514, Panna Lal v Panchu Ruidas

(1916) A I R 1916 Cal 751 (753) 31 Ind Cas 212, Brogendra Kushore Roy v Bharat Chandra Roy

7. (1869) 6 Bom H C R App Cas 41 (44). Lado Lalshuman . Krishnayi Sadashir. (Property in possession of defendant attached by Government— Property then restored to defendant—Held that there was no interruption of the po-session of defendant during the attachment)

(1888) 1888 Bom P J 341, Vishna v. Bhilage (Period during which a village was under attachment by Government could not be taken into consideration in determining the duration of defendant's adverse possession)

Note 68

- 1. (1923) A I R 1923 Mad 29 (29) 70 Ind Cas 672
- 2. (1919) A I R 1919 Mad 779 (781) 42 Mad 425 50 Ind Ca. 43 (F B)
- 3 (1932) A I R 1932 Mad 310 (311) 138 Ind Cas 362.
- 4. (1919) A I R 1919 Mad 779 (581) 42 Mad 425 50 Ind Las 43 (F B)
- 5 (1928) A I R 1923 Mad 29 (29) 70 Ind Cas 672

Arts, 142 & 144 · Note 68 Officer's decision could have such a result—a result which would follow no decision of a Civil Court that a party had or had not title."

A similar view has been taken by the High Court of Bombay in a case arising under the Bombay Land Revenue Code, 1879.

A contrary view has, however, been held by a single Judge of the Madras High Court in the undermentioned case,7 relying upon the view expressed to the same effect in Ramamurthi v. Narayan Gajapathi,8 in which Waller, J, observed that the Full Bench case referred to above did actually decide that such decision operated as an interruption of adverse possession. It is submitted that the contrary view stated above cannot be accepted as correct. The question referred to the Full Bench was as to the conclusiveness of the decision of the Revenue Officer on the rights of the parties as on the date of the order. It does not seem to be possible to regard the Full Bench as having impliedly decided what is really against sound principles of law. In Achutaramayya v. Soorapayya, Mr. Justice Wadsworth reviewed the previous authorities and held that a decision of the Revenue Officer as to the title of the parties would not interrupt adverse possession, but that if the Revenue Officer gave a finding that the defendant was not in actual physical possession on the date of the order, the finding cannot he challenged by the defendant in a suit hy the plaintiff for possession.

Where A in possession made a declaration that he held the property as trustee for B and the Revenue Court on the application of B subsequently ordered mutation in his name, it was held that this constituted clear dispossession of A^{10}

See also the undermentioned cases.11

^{6. (1920)} A I R 1920 Bom 215 (216): 59 Ind Cas 497, Manal v. Narayan. (Fixing boundaries under S. 121 of Bombay Land Revenue Code)

^{7. (1934)} A I R 1931 Mad 685 (696) : 152 Ind Cas 462, Seetharamaraju v.

^{8. (1933)} A I R 1933 Mad 279 (281, 289) : 56 Mad 306 . 141 Ind Cas 307.

^{9. (1939)} A I R 1939 Mad 61 (62, 63).

 ⁽¹⁹²³⁾ A I R 1923 All 59 (63): 69 Ind Cas 971: 45 All 169, Udit Narayan Singh v. Randhir Singh.

^{11. (1921)} A I Ät 1921 Pat 31 (83) 61 Ind Cas 46:6 Pat L Jour 51, Mahant Parbhucharan Eharts v. Secretary of State. (The order of the Collector under S, 41 of the Bengal Survey Act in the case of a boundary dispute operates as the order of a Cavil Court declaring the parties to be in possession of the land in accordance with the boundary as determined by the Collector and hence operates as a dispossession of the party adversely affected by the order 1

⁽¹⁹²¹⁾ A İ R 1921 Pat 277 (278, 279): 61 Ind Cas 78, Bahadur Alikhan v. Secretary of State. (An adverse decision under S. 41 of the Bengal Survey Act amounts to dispossession within the meaning of Article 142.)

^{[1911] 10} Ind Cas 363 (365) (Cal), Joy Kali Roy Choudhury v. Hemangini Debi (Mere registration of owner's name in Collectorate does not interrupt adverse possession.)
[1926] A I R 1936 Oudh 263 (264) . 91 Ind Cas 19, Mt, Saira Bib, v. Karini

Husain. (Revenue Court's order refusing mutation of names in favour of a person in respect of an immoveable property amounts to dispossesson.)

Notes 69-70

69. Subsequent assertion of a different title by defendant, Arts. 142 & 144 if affects his adverse possession. - The Government sold a certain taluk for arrears of Government revenue and it was purchased by X who was put in possession thereof in 1855. A filed a suit in 1868 against X for possession on the ground that the sale by the Government was void. He alleged that subsequent to 1855 the Government had made a new grant to X of the said land at an increased revenue. and this gave a fresh cause of action to the plaintiff. It was held that it did not give the plaintiff any fresh cause of action and that the suit hevond twelve years of the first dispossession in 1855 was harred.1

70. Submerged land, - A person who has a title to land does not lose it by reason of the fact that it becomes suhmerged under water and thus becomes meanable of use and emovment. It follows that where land which became submerged under water re-forms and can be identified as having formed part of a particular estate, the owner of that estate is entitled to it. The leading case on the point is Felix Lopez v. Muddun Mehun Thaloor.2 In that case their Lordships of the Privy Council referred to the following passage in Hale's 'De Jure Maris' (page 15)

"If a subject hath land adjoining the sea, and the violence of the sea swallow it up, but so that yet there be reasonable marks to continue the notice of it, or though the marks be defaced, yet if by situation and extent of quantity and bounding up on the firm land, the same can be known, or it be by art or industry regained, the subject doth not lose his property be freely left again by the reflux and recess of the sea, the owner may have his land as before, if he can make out where and what it was, for he cannot lose his propriety of the soil, although it for a time becomes part of the sea, and within the Admiral's jurisdiction while it so continues "

Their Lordships then observed as follows :

"This principle is one not merely of English law, nor a principle peculiar to any system of municipal law, but it is a principle founded in universal law and justice, that is to say,

Note 69

1. (1674) 22 Suth W R 187 (187) 1 Ind App 335 3 Sar 39 3 Suther 30 (P C), Raja Srs Chartanya Chundra . Collector of Ganjam.

Note 70

- I (1875) 23 Suth W R 8 (9) 14 Beng L N 268 2 Ind App 28 3 Suther 56 : 3 Sar 411 (P C) Hursuhas Singh v Synd Lootf Als Khan
 - (1906) 3 Cal L Jour 560 (568) 1 Wed L Tim 175 (P C), Rans Hemania Kumary Deby . Secretary of State
 - (1935) A I R 1935 P C 125 (126, 124) 156 Ind Cas 549 (P C), Taral das v Secretary of State.
 - (1867) 2 Agra 64 (68), Hur Sahar Vahomed Dum Khan
 - (1905) 3 Cil L Jour 316 (333), inanda Hart Lital . Secretary of State. (2 Ind Apr 28, Followed)
- 2 (1870) 13 Moo Ind App 467 (472) 14 Suth W R P C 11 5 Rag L R 521 . 2 Suther 336 2 Sur 594 (P C) (3 Suth W R 51, Overruled)

that whoever has land, wherever it is, whatever may be the accident to which it has been exposed, whether it be a vineyard which is covered by lava or ashes from a volcano, or a field covered by the sea or by a river, the ground, the site, the property, remains in the original owner."

But, in order to apply the doctrine in Lopez's case2 it is necessary that the person claiming the re-formed land should have been, before submersion, entitled to it. The onus will be on him to show that he had a subsisting title to the property on the date of the submersion.3 Where a person acquires a title hy adverse possession to land re-formed after submersion, and thereafter the land is again submerged and again re-formed, the title to it will be that of the person who had acquired title by adverse possession and not of the original owner.4

Not only will the title continue in the owner during the period of submersion, but pessession in law would be considered to be in the true owner during such period. This would be so whether the true 8. (1985) A I R 1935 P C 125 (126) : 156 Ind Cas 548 (P C), Tarakdas v. Secre-

- tary of State.
- (1925) A I R 1925 Cal 1230 (1231): 88 Ind Cas 567, Panchanon Sarkar v. Basanta Kumari
- 4. (1877) 8 Cal 796 (800) : 1 Cal L R 259 : 3 Suther 486 : 3 Sar 776 : 2 Ind Jur 147 (P C), Radha Prosad Singh v. Ram Koomar Singh.
- (1927) A I R 1927 Oudh 519 (520) : 106 Ind Cas 86, Bhaguan Bakhsh Singh Begaspal Singh.
- 5. (1917) A I R 1917 P C 18 (21): 44 Cal 858: 44 Ind App 104: 40 Ind Cas

W'N 617 :

- (1881) 7 Cal L R 864 (200). Soldied toos it on amount occurd Ray v.
 Inglis. (The burden of proving that the plaintiff has lost that title by reason of the adverse possession of the defendant would then be upon the defendant.)
 - (1921) A I R 1921 Cat 687 (695) : 65 Ind Cas 866, Secretary of State v. Wayed Als.
- (1925) A I R 1925 Cal 1230 (1231) 83 Ind Cas 567, Panchanon Sarkar v. Basanta Kumarı Dası.
- (1900) 28 All 760 (762); 3 All L Jour 567 1906 All W N 234, Munsh: Mazhar Hasan v. Behart Singh.
- (1935) 163 Ind Cas 697 (902) 62 Cal L Jour 177 (188) 63 Cal 300. Surendra Kumar Roy v. Ahmed Nawab Chowdhury, (1922) 65 Ind Cas 769 (770) (Oudh), Bachcha Singh v. Srs Kamlanat Prosad.
- (1930) A I R 1930 Lah 417 (417) : 122 Ind Cas 486, Khan Beg v. Khuda
- (1925) A I R 1925 All 187 (195): 153 Ind Cas 708: 57 All 588. Sri Krishna Dutt v. Mt. Ahmads Bibs.
 - (1933) A I R 1933 Pat 468 (470) : 143 Ind Cas 414, Rasdhars Lal v. Nandlal Mahlon.
 - (1930) 123 1nd Cas 817 (819) (All), Ram Krishan Das v. Mul Chand. (1915) A I R 1915 All 296 (289) : 29 Ind Cas 278, Baldeo Thakuras v. Ugra-
 - nath Misra. . v. Annoda Mohan Roy. Hafis Hussain.

· v. Asutosh Gossami. . Jogendra Nath v. Jaga-

dindranath Ray. (1925) A I R 1925 Nag 164 (165) : 83 Ind Cas 8, Liladhar v. Khetsingh. owner was or was not in possession before the date of the sub- Arts. 142 & 144 mergence, provided he had a subsisting title to the land on that date. If he was in possession on that date, his possession would not terminate by reason of the submergence, but will be deemed to continue during the period of submersion. If he was not in possession on that date but had a subsisting title, the possession of any person who was occupying the land at that time wrongfully would terminate and the true owner would be deemed to be constructively in possession. The reason is that constructive possession cannot be implied in favour of a wrongdoer.8 Nor will such possession enable

- (1925) A I R 1925 Lah 627 (627) : 92 Ind Cas 178, Barket v. Relu Mal.
- (1913) 16 1nd Cas 613 (615) (All), Loknath v. Manorath Bam
- (1924) A J R 1924 Cal 855 (863) : 51 Cal 669 : 78 Ind Cas 679, Suresh Chandra v Shiti Kanta.
- (1927) A I R 1927 Cal 97 (98) . 91 Ind Cas 5, Mohendra Nath v. Nabadwip Chondra Nandy.
- (1876) 1876 Pun Re No. 19. Salib Ras v. Khair Shah.
- (1929) 117 Ind Cas 318 (319) (Pat), Als Muddin v. Salim.
- (1921) A I R 1921 Cal 277 (281) 66 Ind Cas 923, Maharaja of Cooch Behar v Mahendra Ranjan Ras
- (1923) A I R 1923 All 75 (76, 77) 69 Ind Cas 912, Ram Naram Mastr v Decha Masu.
- (1915) A I R 1915 Cal 451 (452) 28 Ind Cas 426, Mahadeo Prasad v. Mt Sheonandan Koer
- (1938) A I R 1938 Mad 470 (473), Secretary of State v. Surva Rao Bahadur Garu.
- (1933) A I R 1933 Pat 468 (470): 148 Ind Cas 444, Rasdhardal v. Nandlal Mahton
- (1923) 74 Ind Cas 881 (891) (Pat), Keshav Prasad Singh v Secretary of
- (1915) A I R 1915 Cal 464 (473) 29 Ind Cas I56, Amrila Sundari v. Sherasuddin Ahamed [See also (1929) 117 Ind Cas 202 (203) (Pat), Parbu Pandey v
 - Rameshuar (1904) 9 Cal W N 111 (115), Madhabs Sundars Dassya v. Gaganendra Nath Tagore. - - -
- C. (1930) A I R 1930 P C 198 (200) 126 Ind Cas 81 (P C), Rampats Chatterjee Ramani Mohan Sen
 - (1905) 3 Cal L Jour 316 (936), Ananda Hars Basal v. Secretary of State (The principle applies even where Government is the owner)
- (1906) 1906 Pun L R No 158, Amir Muhammad Shah v. Sultan Khan. 7. (1921) A I R 1921 Cal 687 (695) 65 Ind Cas 866, Secretary of State v Waged All Khan.
- 8. (1902) 29 Ind App 101 (105) 29 Cal 518 4 Rom L R 537 6 Cal W N 617 . 8 Str 200 (PC). Secretary of State v Krishnamons Gupta
 - (1930) A I R 1930 Lab 417 (417) 127 Ind Cas 486, Khan Ber v. Khuda Bakksh (1922) A I B 1922 Cal 557 (564, 565) 67 Ind Cas 673, Ralhal Chandra
 - Ghose v Durgadas Samanta (1912) 16 Ind Cas 17 (17) (Cal), Golap Mont Dast v Kals Charan Kundu.
 - (1910) 6 Ind Cas 359 (300) (Cal), Baroda Prosad v. Annoda Mehan

a wrongdoer to acquire a title by adverse possession, inasmnch as in order to acquire a title by adverse possession, actual possession on the part of the wrongdoer is necessary during the whole period of twelve years. (See Note 53 ant.)

The result is that if the true owner is shown to have been in possession at the date of submergence and the submergence continued till within twelve years of the suit, the true owner is entitled to recover possession of the land from any wrongdoer in possession. Even if at the time of the submergence the wrongdoer is in possesion, the submergence would operate as an interruption of the adverse possession, and if the re-formation of the land has taken place within twelve years of the suit, the true owner is entitled to recover the same from the wrongdoer.⁹

In The Secretary of State for India v. Krishnamoni Gupta, 10 the Government had dispossessed the true owner of certain lands and were in adverse possession thereof at the time of its submergence under water. The submergence continued till within twelve years of the suit for possession by the true owner. It was held by their Lordships of the Privy Conneil that the plaintiff was entitled to succeed. Their Lordships observed as follows:

"It is nrged on hehalf of the Government that, having been in possession through their tenants when the lands became submerged, their possession must be deemed to have continued in law while the lands were under water, and to have revived on their being re-formed, and relance is placed on a case of Kally Churn Sahoo v. Secretary of State, "I decided by the High Court in 1881. For the purpose of trying the question whether limitation applies, the Government must be regarded as a trespasser and dispossessor of the rightful owners, and in the opinion of their Lordships at would be contrary both to principle and authority to imply such constructive possession in favour of a wrongdoer so as to enable him to obtain thereby a title by limitation. In order to sustain a claim to land by limitation under the Indian Act, there must, in their opinion,

^{(1936) 163} Ind Cas 897 (902): 63 Cal 300 (312), Surendra Kumar Boy v. Ahmed Nawab Choudhry.

⁽¹⁹³⁶⁾ A I R 1936 Oudh 387 (398): 164 Ind Cas 118, Partab Bahadur Singh v. Jagatyit Singh.

^{(1905) 3} Cal L Jour 316 (336), Ananda Hari Basak v. Secretary of State. 8a.(1921) ' Y P 2001 Cal 2001 (2001) Cal 2001 (2001)

cannot take the place of actual adverse presession)
(1015) A IR 1015 Cal 451 (452): 28 Ind Cas 426, Mahadeo Prasad v. Mt.
Shomandon Ruer, (Trespasser's leasing out the fishery rights during
the jeriod of submersion is not actual pressession of the land by him)
9. (1012) I Ind Cas 91 (99): 3 Il MIG 19, Mahbyullah Khan v. Lalid Prasad.

 ^{(1902) 29} Ind App 104 (115)
 29 Cal 515 : 4 Bom L R 537 : 6 Cal W N 617 : 8 Ear 200 (P C).

^{11. (1891) 6} Cal 725 (740) : 8 Cal L R 90 : 4 Shome L R 96.

2147

Note 70

be actual possession of a person claiming as of right by Arts, 142 & 144 himself or by persons deriving title from him. The possession of the Government was in fact determined by the submergence of the land which then became derelict, and so long as it remained in that state no title could he acquired against the true owner. Sir R. Garth, however, seems to have thought that in such a case the possession of a trespasser would continue until the true owner resumed possession.

"Their Lordships cannot agree in this view. On the contrary, they think that on the dispossession of the Government by the vis major of the floods, the constructive possession of the land was (if anywhere) in the true owners. In the case of Trustees, Executors and Agency Co. v. Short,12 it was laid down by this Board that 'if a person enters upon the land of another and holds possession for a time, and then without having acquired title under the statute ahandons possession, the rightful owner on the ahandonment is in the same position in all respects as he was before the intrusion took place.' And the opinion of Parke, B., is there quoted that there must be both absence of possession by the person who has the right and actual possession by another to bring the case within the statute.

"Their Lordships think that for this purpose dispossession by vis major has the same effect as voluntary abandonment, and they are of opinion that the case of Kally Churn Sahoo v. Secretary of State,13 was wrongly decided, and ought to be overruled."

Krishnamoni Gupta's case10 was followed by their Lordships of the Privy Council in the case of Basant Kumar v. Secretary of State,14 where their Lordships held that no rational distinction could be drawn between a case where the re-flooding was seasonal and occurred for several months in each year and a case where the submergence continued for several years at a time. Their Lordships further observed "A man may cease to use his land hecause he cannot use it, since it is under water. He does not thereby discontinue his possession, constructively it continues until he is dispossessed. and upon the cessation of the dispossession before the lapse of the statutory period, constructively it retires it seems to follow that there can be no continuance of adverse possession, when the land is not capable of use and enjoyment, so long as such adverse possession must rest on de facto use and occupation"

In Bhunendra v. Ratesicar,15 their Lordships of the Privy Conned again resterated the same view and observed. "While lands are submerced, constructive po-session is with the true owner, and

80 (P C)

^{12. (1888) 37} W R (Eng) 433 (484)

^{13 (1881) 6} Cal 725 (740) 8 Cal L R 90 4 Shome L R 96

^{14 (1917)} A I R 1917 P C 18 (21) 44 Cal e58 44 Ind App 104 40 Ind Cas 337 15 (1931) A I R 1931 P C 162 (164) 182 Ind Cas 610 55 Ind Apr 225 59 Cal

Arts, 142 & 144 Notes 70 – 71

that, though immediately prior to the diluviation physical possession had been with the adverse claimant."

It has been held in some cases that in order that constructive

It has been held in some cases that in order that coostructive possession may be deemed to be in the true owner, it is necessary that such owner must have been in possession at the date of the submergence. It is submitted that this view is oot correct.

The principle that constructive possession is in the true owner during the period of submergence of the land uoder water is based really on the fact that the land is *neapable* of actual enjoyment during the period of submergence and that the adverse possessico of the wroogdoer (which must be actual) is thereby terminated. The principle would not, consequently, apply where the laods go under water for a few days every year but without ioterfering with the usual acricultural operation on the land.¹⁷

Where a person claims to have been in adverse possession for the required period of the land after its re-formation, no question arises as to the applicability of the doctrine in Lopez's case. 18

71. Receiver and adverse possession. — Where the owner of certain property died and the property was kept dereliet (the heirs being absect from the place) and possession was taken by the officials of the Court, it was held by the Privy Council that it must be presumed that such possession was taken for the benefit of the persons rightfully entitled.\(^1\)

The same priociple holds good even in cases where rival claimants to the possession of the property are present and a Receiver appointed by the Court to take charge of the properties pendente lite. The possession of the Receiver in such cases woold really be on hebalf of the person who is ultimately found cotified to it, and is 16. (100) 1006 All W N 251 (235) 28 AU 760: 3 All L Jour 567, Munshi Machar Hassaw v. Dihara Sangh.

Roy. (1921) A I R 1921 Cal 277 (282): 66 Ind Cas 923, Maharaja of Cooch Behar v. Mahendra Ranjan Ras Chaudhrs.] Note 71

(1914) A I R 1914 P C 243 (246) · (1912) A C 230: 81 L J P C 151 (P C), Corea v. Appuhamy.
 (1926) A I R 1926 Cal 335 (392) . 52 Cal 914 : 90 Ind Cas 851, Eastern Mori-

gage and Agency Co. Lid v. Mohammad Farlul Karim. (1924) A I R 1924 Cal 600 (610): 79 Ind Cas 520, Dwifendra Narain v. Joges Chandra.

(1901) 27 Mad 591 (593): 14 Mad L. Jour 297, Vedanyaga Mudaliar v. Vedanmal.

not adverse to him.3 But the possession of the Receiver would Arts. 142 & 144 operate as a dispossession of the wrongdoer who was in possession at the date of the appointment, and would thus operate as an interruption of the adverse possession, so that the wrongdoer cannot, for the purpose of computing the period of limitation, count the period of his possession before the Receiver took possession.*

The mere appointment of a Receiver however, without his taking actual possession of the property, will not interrupt adverse possession of the wrongdoer.5

72. Abandonment of possession.-Where a trespasser abandons his possession before the expiry of the statutory period, the rightful owner, on such abandonment, is in the same position in all respects as he was before the intrusion takes place.1 The possession of the intruder, ineffectual for the purpose of transferring title, ceases upon its abandonment to be effectual for any purpose.

The question of abandonment by the owner must be considered with reference to local circumstances and conditions. Where a person fails for a long time to take up or keep up a property of value and has no explanation for his neglect, it may be fair to suppose that

- (1905) 2 Cal L Jour 602 (611), Sarala Sundars Dass v. Sarada Prosad Sur. (1918) A I R 1918 Mad 974 (978) . 40 Ind Cas 50, Subbiya Pandaram v. Mahamad Muslapha Maracayar.
- (1927) A I R 1927 Mad 61 (62) 97 Ind Cas 783, Hars Sahib v. Suap Raja
- Sahıb. (1936) A I R 1936 Cudh 887 (395) 12 Luck 371 . 164 Ind Cas 118, Partab
- Bahadur Singh v Jagatyit Singh (1928) A I R 1928 Pat 260 (261) 7 Pat 819 108 Ind Cas 89, Bisheshu ar
- Pralap v Chandreshuar Prasad (1912) 13 Ind Cas 215 (215) 13 Cr. L Jour 23 (Mad), Ismail Ghams Ammal
- · Katıma Rowther (1919) A I R 1919 Mad 8 (10) 49 Ind Cas 69, Kunmutuamy Chetty v.
- Eusala Ramiah (1874) 22 Suth W R 265 (267), Jeebunessree Dabee v. Kristo Monee Dabee
- (1928) A I R 1929 Oudh 155 (189) . 103 Ind Cas 817, . (bdnl Halim Ehan v. Saadat Alı Khan
- (1925) A I R 1925 Cal 681 (683) 86 Ind Cas 677, Sreedhar Chaudhury v. Nilmony Chaudhury
- (1885) 11 Cal 496 (499), Kartichnath Pandey v Padmanund Singh (1894) 17 Mad 501 (503), Orr . Muthia Chetty
- 3. (1919) A 1 R 1919 Mid 8 (10) 49 Ind Cis 89, Kuppuanamy (hetty) Kusala Ramuch.
 - (1895) 11 Cal 496 (498), Kartichaath Pandey v Padmanund Singh
- 4 (1928) A 1 R 1928 Pat 260 (263, 261) 7 Pat 319 108 Ind Cas 89, Bishe. shuar Pratage v Chandreshwar Prasad.
 - (1927) A 1 R 1927 Med 61 (62) 97 Ind Cas 783, Hars Sakib , Shinayi Raja
- (1904) 2 Cul L Jour 602 (611), Sarala Sundars Dam v. Sarada Presad Sur 5, (1924) A I R 1924 Cal 118 (123) 76 Ind Cas 511, Pantas Mohan . Puta

Note 72

- 1 (1926) 4 1 R 1926 Pit 130 (197) 91 Ind Can 163 5 Pat vo Wadnat ar Zamindary Co , Lid . Ram Kanas Singh De.
- 2 (1888) 13 A C 593 (598) 97 W R (Fing) 433 58 L J P C 4 50 L T 677 63 J P 132, Trustees and Apency Co , Ltd v St. 1.

Notes 71 ~ 72

Arts. 142 & 144 Notes 72-75 he may have nhandoned his rights. But where the land consists of scanty culturable nreas recovered from time to time from the river which had inundated them and it does not pay the owners to devote their attention to working it, it cannot be supposed that the owners have, by not cultivating it, nhandoned their rights to it.

- 73. Confiscation and re-grant. By the order of confiscation in Oudb, all titles to the lands confiscated were put an end to and the same were vested in Government. Where the Government made a re-grant of such estate to A and A sued for possession within twelve years thereof, it was held that the suit could not be barred by limitation.¹
- 73. Revenue sale Adverse possession against purchaser. —
 A certain property was sold at a Revenue sale under the Bengal
 Land Revenue Sales Act, 11 of 1859 in consequence of the non-payment of the Government assessment, and was purchased by X. The
 sale took place in Jannary 1891. The defendant claimed that he was
 in adverse possession of the property against all persons having
 claims since 1859, and that the suit was harred. It was held that
 what was sold in the Revenue sale was not the interest of the
 defaulting owner, but the interest of the Crown subject to the payment of the Government assessment, and that therefore the time
 limited by the Limitation Act commenced to run only from the date
 of the sale and that the suit within twelve years thereof was not
 harred.¹
- 75. Dispossession of wrongdoer by another, if interrupts adverse possession.—It has heen seen in Note 64 ante that where there is a break in the continuity of adverse possession, the result is that the possession untomatically revests in the owner and that no act is necessary on his part to hring nhout such revesting. As has heen stated in Trustees & Agency Co., Ltd. v. Short, if an intruder without title holds possession for less than the statutory period and then shandons possession and there is then no person against whom the rightful owner can bring his action, the rightful owner is in the same position as if no intrusion had taken place, and, although he is out of possession for the statutory period and another intruder subsequently takes possession hut does not hold for the statutory period, the title of the rightful owner is unaffected by the statutory There is no difference in principle between a break in continuity

^{8. (1906) 1906} Pun L R No. 158, Amir Muhammad Shah v. Sultan Khan. Note 73

 ^{(1901) 24} All 1 (11, 12)
 28 Ind App 169. 8 Sat 65 (PC), Mazbul Husain v. Latta Prasad.

^{1. (1914)} A I R 1914 P C 82 (83) v. Sarat Chandra Ray.

[[]See also (1921) A I R 1921 Cal 697 (696) 65 Ind Cas 866, Secretary of State v. Wased Als Khan.]

Note 78
1. (1888) 37 W R (Eng) 433 (431) 18 A C 793 59 L J P C 4: 59 L T 677: 53
J P 132.

caused by the roluntary abandonment by the wrongdoor and a hreak Arts. 142 & 144 in the continuity caused by extraneous circumstances.

Notes 75-76

Suppose now that a person in adverse possession is, hefore he bas prescribed for the statutory period, himself dispossessed by another person without title. It is clear that such dispossession is an interruption of the possession of the first wrongdoer. But it is also clear that there is no interval in which it can be said that there is no person against whom the rightful owner can bring an action for possession. The possession does not become revested in the rightful owner, and the dispossession of the first wrongdoer by the second is not a dispossession of the true owner.2 Thus, where A entered on B's property under a title consistent with that of B, but his possession became subsequently adverse to B, and while in such possession he was dispossessed by C. a trespasser, it was held that C's dispossession of A was not a dispossession of B, that the suit by B for possession was not a snit hased on dispossession (A's ontry baying been consistent with B's title) but one governed by Article 141 of the Act.3 It was, however, held in the undermentioned cases that when the possession passes from the first to the second trespasser, there is a constructive restoration, even if a momentary one, of the true title to possession. If it is meant by this that possession momentarily revests in the true owner at the time of dispossession by the second tresposser, it is submitted that the view does not seem to be correct.

As to the offect of dispossession by the second trespasser of the first trespasser on the applicability of Articles 142 and 144 to a suit hy the owner for possession, see Note 92 anfra.

76. Possession must be open. - It would follow from what has been said in Note 16 ante, that one of the essential elements for the acquisition of title by adverse possession is that the possession

2, (1910) 8 Ind Cas 639 (643) : 35 Bom 79, Pasudeo Atmaram v. Eknath Balhrishna.

[See also (1910) 8 Ind Cas 1095 (1095) (All), Ram Lakhan Ras v Gajadhar Rat (Person eplering without title, on the property of deceased person, dispossessed by second fresposser—Suit by true heir held governed by Art 111 as heir was never disposses sed by any body.)

(1921) A I R 1921 Both 48 (48) 45 Bom 570 59 Ind Cas 605, Ramchandra Balwant v Balan Ganesh

*

3. (1910) 8 Ind Cas 639 (643) 35 Born 79. Vasudeo Atmaram v. El anth Eal-Lrishna

4. (1926) A I R 1926 Oudh 313 (314) 29 Oudh Cas 131 92 Ind Cas 825. Sukhdeo v MI Eam Dulare

(1922) A I R 1922 Cal 176 (175) . 70 Ind Cas 602, Jarati Nath Sala v Daikuntha Nath (1933) A I R 1938 Cal 898 (900) 60 Cal 1052 148 Ind Cas 1177, AbSul

Latif . Hamed Gaza.

. Note 76

Arts. 142 & 144 of the wrongdoer must be open. 14 An open possession is a possession which is overt and without any attempt at concealment, so that the person against whom time is running ought, if he exercises due vigilance, to be aware of what is happening. It is not necessary to prove actual knowledge on the part of the owner of the adverse possession.2 In Secretary of State for India v. Debendra Lal,3 where

Note 76

- la (1934) A I R 1934 Pat 64 (65) : 150 Ind Cas 896, Barjnath Mandar v. Ram Adhin Ray.
 - (1935) 164 Ind Cas 61 (63) · 62 Cal 921 (926), Upendranath Ray v. Jitendranath Kundu. (Where the assertion of right is secret and not open, the possession cannot be held to be adverse.)
- (1934) A I R 1934 P C 23 (25): 147 Ind Cas 545. 61 Ind App 78: 61 Cal 262 (P C), Secretary of State v. Debendra Lal.
 - (1915) A I R 1915 Lah 298 (299) : 27 Ind Cas 610, Khuda Bakhsh v. Karmten.
 - (1933) A I R 1933 Lah 25 (27) : 13 Lah 677 . 140 Ind Cas 604, Shiromans Gurdwara Parbandhak Committee, Kosakotla v. Prem Das. (Mahant getting mutation effected in his name by ex parts decree-Not a sufficient overt act.)
 - (1938) A I R 1938 Lah 6 (8) : 170 Ind Cas 994, Mt. Shants Ders v. Mans Singh.
- (1937) A I R 1937 Rang 180 (182). 171 Ind Cas 643, Bashir Ahmed v. Maatschappij.

Rundu.

- (1930) 163 Ind Cas 897 (902, 903) : 63 Cal 300 (318, 314, 316). Surendra Rumar Roy Chowdhry v. Ahmed Nauab Choudhury.
- (1912) 13 Ind Cas 467 (468) (Mad), Veeranna v. Chelamayya. (1938) A I R 1933 Pat 220 (222). 175 Ind Cas 202, Gopiram Ramchandra Firm v. v. Nida Lal; Gub-lessee, Instead of growing crops, erecting head works of collecty—Held gub-lessee's possession was open and
 - public and hence adverse to the landlord.) (1994) A I R 1934 Oudh 21 (23) : 147 Ind Cas 805, Mahomed Mahmud v. Mahomed Afaq.
- (1912) 13 Ind Cas 467 (468) (Mad), Veeranna v. Chelamayya.
- (1938) A I R 1938 Oudh 238 (246) : 177 Ind Cas 718, Musaheb Khan v. Raj Kumar Bolshi.
- (1933) A I R 1933 Nag 27 (27): 28 Nag L R 282: 140 Ind Cas 831. Muraduddin v. Mt. Umraobi.
- (1935) A I R 1935 Cal 760 (761, 762); 159 Ind Cas 752, Bhabam Prosanna v. Manindra Chandra
- (1935) A I R 1935 All 265 (267) . 153 Ind Cas 898. Changr Single v. Changr
- (1909) 8 Ind Cas 431 (432) (Cal), Barash Badri Sahi v. Chamra Uaraon
- (1938) A I R 1933 Lah 6 (8) : 170 Ind Cas 994, Mt. Shants Dets s. Mans Singh
 - (See (1933) A I R 1933 Nag I12 (113) 29 Nag L R 48 : 144 Ind Cas 696, Jas Krishna v. Babu (Possession to the knowledge of the plaintiff and in contravention of his right is clearly adverse to him.]]
- 3 (1934) A I R 1934 P C 23 (25): 147 Ind Cas 515 . Gl Ind App 78 : 61 Cal 262 (PC).

A claimed a title by adverse possession against the Crown and the Arts. 142 & 14latter pleaded that it had no knowledge of the adverse possession of A, their Lordships of the Privy Council observed as follows

Note 76

"Mr. Dunne for the Crown appeared to desiderate that the adverse possession should be shown to have been brought to the knowledge of the Crown, but in their Lordships' opinion there is no authority for this requirement. It is sufficient that the possession he overt and without any attempt at concealment, so that the person against whom time is running ought, if he exercises due visilance, to he aware of what is happening. If the rights of the Crown have been openly usurped, it cannot be heard to plead that the fact was not brought to its notice"

It has been held in some cases that knowledge is necessary on the part of the true owner in order to constitute the wrongdoer's possession adverse. In view of the clear pronouncement of their Lordships of the Privy Council in Debendra Lal's case above referred to, the view expressed in the said cases cannot, it is submitted, be considered to be correct.

Where A sued for possession of underground inining areas in which the defendant was carrying on mining operations, and to which the plaintiff claimed title and proved it, it was held that the defendant must, in order to show adverse possession for the statutory period, prove that the possession was open-i e. that "there was that to he seen on the surface which the plaintiffs' prodecessor, heing reasonably vigilant, ought to have seen, and so seeing would have heen put on their guard, although they did not have any titlo to the snrfaco "3

- 4 (1879) 3 Bom 452 (520, 784, 785), Bhasharappa v Collector of North
 - (1935) A 1 R 1935 Bom 98 (100, 101) 156 Ind Cas 339, Daluchandy Shants, (Word 'adverse' in Article 144 connotes something similar to knowledge)
 - (1927) A I R 1927 Nag 104 (106) . 22 Nag L R 175 · 100 Ind Cas 446, Mt. Deshrans v. Kishore Singh.
 - (1932) A 1 R 1932 Oudb 46 (19) . 7 Luck 250 137 Ind Cas 678, Suray Bals 1. Mahadev Prasad
 - (1920) A I R 1920 Cal 202 (204) 56 Ind Cas S11, Manulla Kolu v Prasanna Kumar Sarkar
 - (1929) 4 I R 1929 Oudh 402 (405) 119 Ind Cas 866, Mubinulniss: v ila Hossam
 - (1913) 21 1nd Cas 201 (207) (Cal) Badha Madhab Naran v Valan Mahate. (1926) A 1 R 1926 Oudh 818 (315) 29 Oudh Cas 131 92 Ind Cas 825, Sal hdeo v Mt Ramdulars
 - (1871) 15 Suth W R 191 (191) 6 Peng L R App 151, Dhanul Dhars Singh Gort Smah. (Sec (1927) A I R 1927 Oudh 448 (449) 104 Ind Cas 394, Ashraf Ala
 - . Salhanat Hussen (Adverse entry in khewat will not set time running against person unless he has notice) (1924) A I R 1924 Pat 218 (214) 2 Pat 839 75 1nd Cas 955 Illama-
 - nadhan Sahay v Jasgovind Pandey] [See also (1907) 84 Cal 753 (774) 5 Cal L Jour 5-3 12 Cal W N 193.
- | Drojonath Bow v | Purg v Pershad Singh | 5 (1935) v 1R 1935 P C 35 (39) 153 Ind Cas 929 | 14 Pat 327 | 67 Ind type 40 (P C), Srischandra Nandy v, Engintin Jugadus | re

Arts. 142 & 144 Notes 76 - 77 See also the undermentioned case,6

77. Adverse possession against minor or lunatic. — It has been seen in Note 32 to Section 6 ante that the mere fact that a person is a minor or lunatic will not prevent limitation from running against him although he will be entitled to an extended period of limitation. Hence, although a property may helong to a minor or lunatic, if such property is in the adverse possession of another, limitation will run in the latter's favour. In But the question arises whether there can be adverse possession against a minor or lunatic. In Sectharamaraju v. Subbaraju, their Lordships of the Madras High Court observed as follows:

"We do not think it can be stated as a general proposition that there could be no adverse possession of property which belongs to a lunatio or minor during the continuance of the lunacy or minority of the owner.

"The question has in each case to be decided with reference to the anterior relationship between the person taking possession and the minor or lunatic, and to whether any circumstances exist which would entitle the Court to hold that the person who entered into possession did so under circumstances which would in law make him only an agent or hallif of the minor or lunatic.

"... It seems to us from the provisions of the Limitation Act that lunacy or minority would not by itself prevent limitation from running as against a lunatio or minor and that in cases where it is clear that the person entering into possession was under no duty to the lunatio or minor and entered into possession for his own benefit and in assertion of a title hostile to that of the lunatio or minor, limitation would begin to run from the date when he eo took possession, though the lunatic would be catitled to file a suit within three years from the date when his disability ceases "

It has been seen that in the case of co-owners, there can be no adverse possession by one of them against the others unless there is a denial of their title to their knowledge. Suppose the co-owner against whom adverse possession is claimed is a minor. Can there be a denial of his title to his knowledge? In Jagannath v. Okandari. Bibi: Mockrieo, J., observed as follows: "Apart from this, we have

Nuts 77

^{6. (1912) 13} Ind Cas 467 (168) (Mad). Verranna v. Chelamayya. (If the possession of the defendant is of an ineffective character such as by tying cattle, assuming that its character could be improved by an assection of title made to the owner's knowledge, it is necessary for the defendant to show that the owner had knowledge of such assection or that it was made under circumstances which would imply that he must have had knowledge?

¹¹ See (1893) 1893 Bom P J 97, Baya v. Baban.

^{1. (1922)} A I R 1922 Mad 12 (15): 45 Mad 361: 70 Ind Cas 678.

^{2 (1921)} A I R 1921 Cal 647 (651) : 67 Ind Cas 31.

the important circumstance that in this case the rightful owner, the Arts. 142 & 144 second plaintiff Ramnibas, who, when a child a few months old, was taken in adoption in 1892, was a minor till at least 1910, it is thus difficult to appreciate how the contesting defendants began to bold adversely to the knowledge of the infant in 1901." It is submitted that by his above remarks the learned Judgo cannot have intended to lay down as a general proposition that minority necessarily excludes knowledge. The question must be one depending on the age of the minor and other circumstances in each case.3 It cannot be said that minority in itself negatives knowledge.4

Although, thus, the minority or insanity of the owner does not prevent limitation from running against him or possession from hecoming adverse against him, he will be entitled to an extended period of limitation under the provisions of Sections 6 and 8 ante.5

Article 44 supra applies to a suit by a minor to set aside an alienation of his property by his guardian where euch alienation is voidable sa But where the alienation of a minor's property is void, Article 44 does not apply.6 (See Notes to Article 44.) In such a case, the remedy of the minor will be hy a suit for possession where the alience has taken possession under colour of the transfer. It is conceived that the Article applicable to such a suit will be Article 142, (See Note 60 ante.) Hence, it is submitted that the undermentioned decisions," in which it was held that Article 144 will apply to such cases, are not correct.

78. Possession is not adverse to person not having a present right to possession. - Adverse possession is possession which is in contravention of the right of another to such possession Hence, possession cannot be adverse against a person who is not entitled to

- 8 (1932) A I R 1932 Born 23 (24) 184 Ind Cas 366, Shidingara v Razara 4. (1920) A I R 1920 Mad 793 (798, 800) 52 Ind Cas 725. Narasımha v Krishnachandra.
 - (1924) A I R 1924 P C 187 (141) · 48 Bom 411 · 51 Ind App 220 . 79 Ind Cas 971 (P C), Kalyandappa v. Chanbasappa.
- 5. (1903) 1903 Pun L R No. 51, Basant v. Indar.
- 5a(1936) A I R 1936 Mad 346 (347) 161 Ind Cas 797 59 Mrd 519, Ankamma v Kameshicaramma.
- 6, Sec (1915) A I R 1915 Nag 52 (55) . 12 Nag L R 12 32 Ind Cas 212, Astram v. Ratausingh (1921) A I R 1921 Cal 572 (578) 62 Ind Ca. 428, Lalco Karikar v Jayat
 - Chaudra Saha (1927) A I R 1927 Nag 145 (147) 99 Ind Cas 1050, Mahadeo v. Somayı. (1919) A I R 1919 Cal 154 (155) 49 1nd Cas 118, Aftabuddin v. Pro'ash
- Chunder Soot 7 (1879) 5 Cal 363 (870, 878) 5 Cal L R 374 5 Ind Jur 200, Selher Chund v.
- Dulmutu Singh (1914) A I R 1914 Nag 75 (76, 77) 10 Nag L R 133 26 Ind Cas S13 Huen v Rasaram
 - (1918) A I R 1918 Nag 20 (22) 15 Nag L R 55 51 Ind Cas 943, I atha v
 - (1931) \ 1 R 1931 Rung 178 (178) 134 I C 214, Rarga Ehm v Ma Chu. (1976) A I R 1976 Mad 457 (461) 49 Mad 76 92 Ind Cas \$27. Seet) aramamma v Appsah

Notes 77-78

possession.1 Thus, where A is entitled to a life-estate in certain land and B is entitled to the remainder, the possession of a transferee from A does not become adverse to B before A's death. A is entitled to a vested interest in a house but not to possession of it during the lifetime of B, a widow, who is entitled to possession in virtue of a right of residence. A transfers bis rights to C. The possession of the widow is not adverse to C as his right to possession accrues only after the widow's death.23 See the undermentioned cases3 for other instances.

Note 78

- 1. (1928) A I R 1928 All 726 (730) : 50 All 986 : 118 Ind Cas 177 (F B), Sohan Lal v. Mohan Lal.
 - (1878) 4 Cal 327 (329, 331) . 2 Shome L R 106, Bejoy Chunder Banerjee v. Kally Prosonno Mooher see.
 - (1902) 26 Bom 617 (621) . 4 Bom L R 312, Balkrishna v. Gound.
 - (1912) 17 Ind Cas 642 (644) : 37 Bom 64, Dabaji Akoba v. Dattu Laxman,
 - (1871) 16 Suth W R 270 (270), Kabul Krishna Dass v. Mohessuree Debia. (1937) A I R 1937 Cal 343 (345) : 173 Ind Cas 439, Narattam Day v. Deben-
 - dra Lal Khan. (1865) 1885 Pun Re No. 36, Sheoji v. Dhan Singh.
 - (1916) A I R 1916 Pat 93 (94): 37 Ind Cas 107: 1 Pat L Jour 293, Narupraja Singh v. Bhabans Tels.
 - (1890) 1890 Bom P J 107, Keshav v. Gopalrao. (1909) 2 Ind Cas 57 (59) : 12 Oudh Cas 45, Pratap Dahadur Singh v. Mahe-
 - tar Baksh Singh. (1911) 9 Ind Cas 791 (794) : 35 Mad 231, Parthasarathy Nauchen v. Laksh-
 - mana Natchen, (1911) 9 Ind Cas 300 (302) : 1911 Pan Re No. 26, Sundar v. Salig Ram.
 - (1916) A I R 1916 Mad 990 (997) 39 Mad 811 : 31 Ind Cas 412 (F B), Vyapurs v. Sonamma Dos Ammans.
- 2. See (1875-77) 1 Bom 535 (Note) (537), Dabaji v. Nama.
- (1921) A I R 1921 Cal 667 (696) : 65 Ind Cas 866, Secretary of State v. Wazed Als Khan.
- 21.(1928) A I R 1923 Cal 250 (252), Ambika Prosad Doss v. Annada Prosad Dass.
 - HADDLE TO TOO STATE OF LOSS OF THE TOTAL COST - 'mar v.
 - tmnsat if he
 - donce sold the property more than 12 years before his return, held that for a suit by plaintiff against vendee, limitation began only on return
 - from Port Blair.) (1891) 14 Mad 495 (498), Kuttyassan v. Mayan. (Gift of hie interest by Karnavan-Snit for possession by succeeding Karnavan-Time runs from
 - the death of the grantee) (1930) A I R 1930 Pat 562 (561): 127 Ind Cas 835, Muchi Ram Bagal v. Balaram Bhumij. (Possession of under-raiyat for life-When Lecomes
 - adverse to landlord.) (1918) 22 Ind Cas 575 (575, 576) (Cal), Bepin Behari Challadar v. Jagat Kishore Acharys. (Suit for possession of property allotted in partition
 - -Time begins to run when the property was allotted ! (1884) 8 Bom 585 (590, 591), Tularam v. Suganger Guru. (Vatan lands attached by Peshwas—Continuance of attachment under, and subsequent redemption by, British Government-Possession by defendant as tenant to Government, if adverse-Plaintiff's incompetency to sue during attachment and resumption)
 - (1915) A I R 1915 Mad 217 (221) : 21 Ind Cas 519, Chattan Rajah Avergal v. Laman l'arma. (Adverse possession against a 'stani' in Malatar who holds only for life will not har next 'stani' when succession opens.)

79. Adverse possession against holder of life-estate,—Where Arts. 142 & 14 holds only a life-estate in certain property, Y, the person entitled Note 79

X holds only a life-estate in certain property, Y, the person entitled to succeed to the property on the death of X, cannot be said to have any right to the possession of the property till the death of X. There can, consequently, be no adverse possession against Y till he becomes entified to possession on the death of X. For, as has been seen in Note 78 ante, a possession is adverse to A if it is in contravention of the title of A to such possession, and there cannot be any such contravention when A is not entitled to possession at all Articles 140 and 141 ante, are based only on this principle and time is accordingly made to run against the person entitled to succeed on the termination of a previous estate, from the time when such person becomes entitled to possession, and a suit by such person for possession against the defendant who had entered into wrongful possession during the lifetime of the holder of the life-estate would he governed by Article 144, time running from the death of the latter 1 See also Note 13 to Article 141 and Note 2 to Article 140.

(1928) A I R 1928 Lah 250 (255): 113 Ind Cas 53, Zwida v Mt Rosinar (Where a property is mortgaged for a fixed term and on the dath of the mortgage the guardian of his minor som mites an unauthorized sale of the property and the purch her redeems the mortgage prematicity, the plact of adverse possession by the purchaser cannot stand as the time begins to run against the true owner after the date of the first directions the purchaser than the purchaser than the purchase that the purchaser than the purchase that the purchaser than the purchase that the purchase the purchase that the purchase the purchaser than the purchase that the purchase that the purchase that the purchase that the purchase that the purchase the purchase that the purchase that the purchase that the purchase that the purchase the purchase that the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase the purchase

(1928) A I R 1928 Onth 273 (274) - 3 Lock 499 112 Ind Cas 681, Ram Ratan Ealth , Aditys Parand, (Whene certain properly was under a usufructuary mortgage and was in the possession of the mortgage and the mortgage and the mortgage and the mortgage and the mortgage and the case of the control of the sale deed, the equity of redemption passes to the vendee and any subvequent repudrition of the sale deed by the tender or assertion that he was still the owner will not amount to any adverse possession against the vendee when the control of the sale deed by the tender of the control to the control to the control to the control to the control to the control to the control to the control to the mortgage in the property all along continuums in the possession of the mortgages?

(1022) A I R 1922 Nag 16 (17) 65 Ind Cos 362 Marotin Larman (Where the lessor was adopted into another fimily, held that assuming that

defendant—Order conferring lease on defendant stated that plaintiff could recover the putner after 15 wars—ther 15 wars—ther 15 wars of his ejectment plaintiff such defendant for possession—Defendant pleided addresse possession for over 12 wars—Held, there was no adverse possession for

(1931) A. I. R. 1931. L. Li. 439, (440). 131 Ind. Cis. 105. Salhan v. Malku. (Where the sale is voulable at the instance of reversioner, it is good for the lifetime of the shearing proprietor founder Pusiph Customar. Law) and the possession of the vendee can become adverse only after the death of the vender.

(1913) 19 Ind Cas 222 (224) 1913 Pun Re No 19. Paras Ram v Nathu Mai (Do)

(1911) 11 Ind Cas 93 (91) (Oudb) Thagwandas a Ishar Dat (Possession of widow is not adverse to the reservoire)

Note 79

Arts. 142 & 144 Notes 79-80 Where, however, adverse possession has begun against a person through whom the plaintiff claims, the interposition of a life-estate will not stop time running against the plaintiff: see Note 14 to Article 141.

Alienation by holder of life-estate.—The possession of an alience from the holder of a life-estate only in the property alienated, cannot also, on the principles stated above, he adverse to the person entitled to possession on the termination of the life-estate, till the estate falls into mossession.³

See also Note 60a, ante.

80. Adverse possession of trust property by stranger.—
The exemption from limitation under Section 10 of the Act applies only to a suit against a trustee or his legal representatives or his assigns (not being assigns for valuable consideration). The exemption does not apply to a suit against a stranger to the trust who is in possession of the trust property claiming it to be his own property. Such possession will he adverse to the trust and a suit for possession against the stranger after twelve years from the commencement of the adverse possession will be harred by limitation.¹

Where, however, the stranger does not deny the trust or remove the trust properties from the objects of the trust and claims to be a trustee himself and takes possession of the trust properties as such trustee, his possession will not he adverse to the trust staelf, but will be adverse to the trustee, and after twelve years of such possession he will acquire the right of a trustee. In Balwant Rao v. Puran Mal, it was observed by their Lordships of the Privy Council as follows:

"When property is used for some purpose other than the proper purpose of the trusts in question, it may be recovered without any har of time, from the hands of the persons indicated in the Section (Section 10). But here there is no question of recovering the property for the trusts of the endowment, heause the defendant admits that he is a trustee and says that he is

> iry to om

(1919) A I R 1919 Nag 52 (53): 59 Ind Cas 473, Mahomed Strajuddin v. Fayatuddin. (Such Inamdurs have only life interest—Hence an alience from such Inamdar cannot plead adverso possession against the next holder, on the basis of such alienation.)

Note 80

1 (1855) 16 C B 652 (670) . 21 L J C P 187 . 1 Jour (N S) 759 : 3 W R (Eng) 595 100 R R 871, Melling v Leak.

(1731) 3 P Wms 309 (310) 21 E R 107e, Wych v East India Co.

... 30 1000 1001 00 7 10 400 11 1

(1916) A I R 1916 Mad 130 (135) 30 Ind C1s 669, Muruga Chetty v. Rajasuramy. (But a stringer allowed to be in possession by a trustee—lits possession will be permissible and not adverse)

2. (1893) 6 All 1 (9): 13 Cal L R 39: 10 Ind App 90: 7 Ind Jour 329: 4 Sat 435 (P C)

Notes 80-831

- applying the property to the trusts of the endowment. There is Arts, 142 & 144 no evidence that he is not applying the property to the trusts of the endowment, and there is no reason to conclude that the property would be more applied to those trusts if the plaintiff were to succeed in his suit than it is at this moment. The plaintiff is suing only for his own personal right to manage or in some way to control the management of the endowment. The consequence is that the case does not fall within Section 10 of the Limitation Act. If it does not, then it must be within one of the Articles of the Schedule."
- 81. Adverse possession against one co-trustee, if adverse to the other. - Where there are two co-trustees and one of them who is in management for the time heing is dispossessed, and the trespasser continues in possession for a period of twelve years, it has heen held that the right of the alienor trustee as well as the right of the other co-trustee will be harred even though the latter had been a minor at the date when the adverse possession began, and the suit is filed within three years of his attaining majority 1
- 82. Adverse possession against co-owners .- Where one coowner who is in possession on hehalf of all of the co-owners is dispossessed by a stranger, the possession of such stranger is adverso to all the co-owners.1

The adverse possession by a stranger against the co-owners of a property is not interrupted by a partition among the co-owners.2

83. Adverse possession against widow is not adverse against subsequently adopted son, - Where A, a Hindu male, adopts B as his con. B does not get any immediate right to possession of the properties of A But, for purposes of limitation the period of adverse possession against A will have to be taken into account against B also, since B derives his right to sue from A

Where a Hindu widow makes an adoption of a son to her deceased hushand, the adopted son does not claim through the widow but hecomes entitled to the property of the adoptive father as his heir, on the date of adoption. On the principles stated in Note 78 ante, adverse possession against the widow will not he adverse against the adopted son 1 It will become adverse to him only from the date

Note 81

1. (1910) 6 Ind Cas 992 (993) 34 Mad 254. Thiagaraja v Rathnasabapathy Pillas

Note 82

- 1 (1919) A I R 1919 Cal 55 (56) 50 Ind Cas 570. Abdul Sot in v Lazmi Prasad Agarualla
 - (1927) A 1 R 1927 Cal 457 (45%) 100 Ind Cas 507 Manenddi v Md Farent
- 2 (1920) A I R 1920 Oudh 147 (150) (O Ind Cas 717, Farl Hag v Lugares Lhanam

Note 83

1. (1925) A I R 1925 Fem 402 (403) 49 Bem 604 89 Ind Ca- 62 Hammark Subbauta v Krishna Manjunath

Notes 83-84

Arts. 142 & 144 of his adoption, when, for the first time, he becomes entitled to possession.2

> A suit hy the adopted snn for possession of the properties of the adoptive father from a person who has entered into possession before the date of the adoption, whether as nn nlience or as a wrongdoer, would he governed by Article 144 and not by Article 142.5 The reason is that at the time of the entry, the defendant could not be said to have entered an the property in contravention of the title of the plaintiff, inasmuch as the plaintiff had no title at all on that date to such possession.

> Article 119 has no application to a suit by the adopted son for possession of the adoptive father's property, as the adopted son is not bound to sue for any declaration such as is contemplated by that Article, before sping for possession.4

> 84. Adverse possession against mortgagor, if adverse against mortgages. - A executes a mortgage in favour of B who has, under the terms of the mortgage, no right to the possession of the property. C, a trespasser, enters on the property while in the nossession of the mortgagor and remains in possession for twelve years. Is the mortgagee affected by such possession? On the principles stated in Note 78 ante, it seems to be clear that his rights cannot become affected in any way. C's possession cannot be said to he adverse to B, inasmuch as B had no right to possession on the date of C's entry and there can be no possession in contravention of the title of another to such possession when such person has no title to possession. Nor can the mortgagee, in the case stated above, be said to derive his right to sue from the mortgagor as the mortgage is prior to the cause of action. The position would be different where A executes a mortgage in favour of B after the date of C's entry into pessession adversely to A. The extinguishment of the title of A by the adverso possession of C will operate to extinguish B's mortgage also. The reason is that B is a person claiming through A in respect of the cause of action

^{(1905) 2} Cal L Jour 87 (94, 96) : 9 Cal W N 75, Harek Chand Babu v. Bejoy Chand Mahatab.

^{(1900) 2} Bom L R 411 (414), Hars Vithal v. Waman Hars (1928) A I R 1928 Oudh 155 (189, 190) : 108 Ind Cas 817, Abdul Halim

Khan v. Saadat Als Khan. (Prescription does not run against a person who is either mable to act or is non-existent. Therefore in the case of an adopted son limitation does not run prior to adoption.) (But see (1889) 13 Bom 276 (278), Krishnafi Janardhan v. Morbhat.

⁽Not good law.)] 2. (1905) 9 Cal W N 233 (233) (S N), Harel Chand v. Bejoy Chand Mahatab. (1921] A 1 R 1921 Nag 111 (111) . 17 Nag L R 18, Silaram v. Rajaram. (Suit by adopted son against adverse possessor before adoption.)

^{3 (1921]} A 1 R 1921 Nag 111 (111) 17 Nag L R 18, Sitaram v. Rajaram. (1895) 19 Rom 809 (814, 815, 818, 819), More Narayan v. Balaj: Raghunath. (Per Candy, J.)

^{4. (1909)} I Ind Cas 647 (619) : 33 Bom 89, Ram Krishna v. Tripurabai. (1903) 1903 All W N 163 (166) : 26 All 40, Chandania v. Salia Ram. See also Notes to Articles 118 and 119, ante.

Arts. 142 & 144

Note 84

against C and will be bound by the adverse possession against A. ¹⁸

In Karan Singh v. Baker Alı Khan,1 it seems to have been assumed that Article 144 would apply to a suit by the mortgagee to enforce his rights in such cases. The facts of the case were that A made a mortgage of his property to B in 1862. But before that date. in 1861, the Collector had taken possession of the property in order to secure the Government revenue and retained at tall 1863 when ho handed over possession to C. a rival claimant to the property, who, however, was found not entitled to it. B brought a suit for sale on his mortgage in 1874. C contended that his possession from 1863 must be tacked on to the Collector's possession which began in 1861 and that therefore the suit was barred by limitation. Their Lordships held that no such tacking could be allowed and that the suit was within limitation. The suit having been brought within twelve years both from the date of the cause of action on the mortgage and from the date of C's entry into possession, it was unnecessary to decide the question of adverse possession. Further, the adverse possession having begun prior to the date of the mortgage, the plaintiff would be bound by such adverse possession against .1 and the suit would therefore be governed by Article 144. Karan Singh's case! was distinguished on the above ground in Ray Nath v Narain Das,2 decided by a Full Bench of the Allahabad High Court. A Full Bench of the High Court of Madras has also held, distinguishing Kayan Singh's case. that where a person enters adversely into possession of

is not adverse to the mortgages who is not barred from suing on his mortgage by reason of such adverse possession. See also the under-Note 84

the property of a mortgagor, the mortgage being simple, his possession

- 1a (1912) 17 Ind Cas 632 (631) 34 All 640, Nandan Singh v Jumman (1930) A I R 1930 Cal 818 (315) 126 Ind Cas 257, Surendia Nath v Barisel
 - Loan Co Ltd. (1902) 25 Ali 85 (37, 38) : 1902 Ali W N 175, Ram Lal v. Musum Ali Khan.
 - (1893) 23 Mad 37 (39): 9 Mad L Jour 258, Kallamuthu Pillat v Detha Natchen (1895) 18 Mad 342 (316), Subbaramayyar v Negamadullah Saheb (In this case mortgage effected after the title of the mortgages was extinguished
 - by adverse possession) (1928) A I R 1928 Lab 499 (502) 110 Ind Cas 18, Tara Singh v Exe
 - Saran. (1897) LR 2 Q B 143 (158) 66 LJ Q B 705 77 LT 5 46 W R (Fr5) 36.
 - Thornton v France. (1920) A I R 1920 Nag 279 (280) 52 Ind Cas 933 15 Nag L R 151 Mt.
 - Amerber, Rhaja (1917) A I R 1917 Mad 228 (230) 33 Ind Ca. 326 39 Med 959, Pennyu Subbah v Rame Bradi
 - (1911) 9 Ind Cas 900 (991) (All), Latinath v Bl adou an
 - (1870) 2 N W P H C R 223 (224), Sheoup ber Sako v. Idea aver 'eea Rulkar.
- 1. (1882) 5 All 1 (5, 7) 9 Ind App 29 4 Str 382 5 Sh. me L R =0 (P C). 2. (1914) A I R 1914 All 95 (96) 86 All 507 24 Ind Ca. 17 (F1 * c) a l'atr-
- 2. (1914) A I R 1914 All 95 (20) 30 All 30. 42 Ind Ca. 1871 A 17 Annual St. 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 1871 A 187
- (1916) A I R 1916 Med 290 (996) 33 Mai -11 4 16d ta- 412 (F1)
 Viopura V. S campio I on

Arts. 142 & 144 Notes 84-85

Arts. 142 & 144 mentioned cases' in which the same principle has been applied.

85. Adverse possession against mortgagee, if adverse to mortgager.—Where the mortgagee is not entitled to possession under a mortgage and the mortgager continues in possession after the mortgage, it is clear that the possession of a trespasser who dispossesses the mortgager is adverse to the mortgager. Even where the mortgage is entitled to possession of the property, the mortgage may he entitled to receive a portion of the rents and profits of the property under the terms of the mortgage. Where, in such a case, a third person interferes with the right of the

 (1918) A I R 1918 Cal 933 (935): 44 Cal 425; 37 Ind Cas 277, Prvya Sakhi Debi v. Birechwar Samanta.

(1912) 17 Ind Cas 632 (634): 84 All 640: Nandan Singh v. Jumman.

(1911) 9 Ind Cas 791 (794): 35 Mad 231, Parthasarathy Naicken v. Lakshmana Naicken.

(1936) A I R 1938 Pat 189 (190): 175 Ind Cas 279, Ramasray Prasad v. C. G. Alkins (Invalid lease by mortgagor after mortgage — Lesso's postession is not adverse to mortgages)

(1914) 22 Ind Cas 94 (95): 9 Nag I, R 191, Nasar Ali v. Hiraman. (The principle is equally applicable to the case of a mortgages by conditional sale not entitled to possession.)

v. Annada Prosad. . 308 : 77 Ind Cas 125, Jai

(1930) A I R 1930 Cal 318 (315) : 126 Ind Cas 257, Surendra Nath v.

Barrisal Loan Co. Ltd. (1924) A I R 1924 Cal 600 (609): 79 Ind Cas 520, Dwisendra Narain Roy v. Joges Chandra De

(1906) 93 Cal 1016 (1019) : 10 Cal W N 904, Aimadar Mondul v. Makhan Lai Dey. (1929) A IR 1929 Pat 577 (579) : 121 Ind Cas 471, Mohan Bhakat v. Jac-

(1920) A I R 1929 Pat 577 (579): 121 Ind Cas 471, Mohan Bhakat v. Jagdayan Pandey. (1931) A I R 1931 Pat 64 (67): 10 Pat 234: 130 Ind Cas 257. Chanshvam

Das v. Ragho Singh. (1928) A J R 1923 Mad 160 (161): 99 Ind Cas 831, Sundaram Tyer v. Thi-

yagaraja Pillai.
(1922) A I R 1922 Cal 32 (S5): 69 Ind Cas 841, Silal Chandra Majhi v.

(1922) A I R 1922 Car 32 (35) : 05 Ind Cas 841, Stat Change Majre v.
Parbali Charan Chakrabarts.
Venhata rishna Moorthy

ovided that the mortgage etails by the mortgage in the mortgage in the mortgage and the possession of a trespasser is not adverse to him.)

(1901) 2 K B 96 (100) : 70 L J K B 552 · 84 L T 485 : 49 W R (Eng) 465 : 17 T L R 897, Ludbrook v. Ludbrook

(1909) 2 Ind Cas 57 (62): 12 Oudh Cas 45, Pratap Bahadur Singh v. Maheshwar Bahsh Singh

(1923) A I R 1923 Pat 305 (306): 63 Ind Cas 641, Kunj Lal v. Kanhai Mahto.

Mahio. (1919) A I R 1919 Cal 716 (717) 50 Ind Cas 301, Kali Krishna v. Tara Prosanna.

(1890) 7 Cal S94 (400), Manly v. Patterson

(1937) A I R 1937 Pat 13 (14) · 15 Pat 372 . 166 Ind Cas 312, Narayan Pra-

(1927) A I R 1927 All 202 (310) · 100 Ind Cas 224, Sami Nath Singh v. Thakur Pranal Ras. (Transferre pendents life cannot-prescribe title by saverse possession against morlengee auction purchaser till he is entitled to actual possession.)

(1901) 1001 Pun Re No. 10 : 1901 Pun L R No. 81, Kasar Singh v. Thalur

24

mortgagor and receives the rents and profits in assertion of a hostile Arts, 142 & 144 title, such third person must be beld to be in adverse possession of the mortgagor's equity of redemption. But suppose, that the mortgage is with possession and the mortgagor is not entitled to any share in the actual enjoyment of the property. In such a case, if a person dispossesses the mortgagee and enters into possession of the mortgaged property, such possession will not be adverse to the mortgagor, the reason being that possession cannot be adverse to any one who has no immediate right to possession. But it has been held in several decisions that even in such cases the possession of a third party who dispossesses the mortgagee and enters into possession can be adverse to the mortgagor3 and that it will be adverse to him where the trespasser denies, to his knowledge, his title to the property,4 It is respectfully submitted that this view conflicts with

Note 85

- 1, (1923) A I R 1923 Pat 592 (597); 76 Ind Cas 277, Binanand Sawase v. Thurco Mahio.
 - (1935) A I R 1935 All 542 (543) : 159 Ind Cas 151, Salig Ram v. Gaurs Shankar.
- 2 (1875) 12 Bom H C R 180 (183). Vathoba v Ganga Ram
 - (1935) A I R 1935 All 542 (543): 159 Ind Cas 151, Salig Ram v. Gaurs
 - (1935) A I R 1935 Lah 315 (316) : 16 Lah 724 : 158 Ind Cas 218, Amar Nath v. Duns
 - (1923) A I R 1923 Pat 592 (597) . 76 Ind Cas 277, Benanand Sawase v. Thurso Mahto
 - (1929) A I R 1929 Pat 689 (640); 9 Pat 682; 122 Ind Cas 512, Dubraj Mahto v. Lalji Sahai.
 - (1923) A I R 1923 All 11 (12) 70 Ind Cas 959, Durga Dets v. Girwar Singh (1925) A I R 1925 Bom 465 (466) 49 Bom 539 87 Ind Cas 765, Tarabas
 - Ramrao v Datta Ram Govend Bhas (1904) 27 All 395 (996) 1905 All W N 4 1 All L Jour 725, Muhammad
 - Hussam v. Mulchand. (1924) A I R 1924 Cal 357 (358) 71 Ind Cas 1030, Kamala Kanta v. Ananda
 - Chandra (1921) A I R 1921 Born 293 (296) . 45 Born 661 . 60 Ind Cas 913, Gilabas
- Bhan v. Krishna Malhars 8. (1927) A I R 1927 All 177 (180): 99 Ind Cas 280, Munawar Ali v Jagamilan
- (1894) 18 Bom 51 (54, 59), Chinto v. Janks.
- (1922) A I R 1922 Bom 94 (95) . 67 Ind Cas 176, Vanayal Keshar v. Bala Shuram
- (1903) 27 Bom 43 (67, 69) 4 Bom L R 721, Tarubas v Venkat Rao
- (1897) 1897 Bom P J 33, Daulata Aba v Yesu Narsu
- (1889) 1889 Pun Re No. 161, Nihal Singh v Wutaddi. (1898) 1893 Pun Re No 6, Khann Mal v Khan Muhammad.
- (1914) A I R 1914 Mid 334 (341) 38 Wad 903 22 Ind Cas 615 (F 13), Perm Anya Ambalam . Shunmugasundaram. (Question depends on facts and circumstances of each ca-c)
 - (1879) 2 Mid 226 (225, 229), Ammu v Ramalrishna Sastri
 - (1930) 1930 Mad W N 1148 (1151), Vecranna v Ventadu. (1924) A I R 1924 Oudh 40 (43) 26 Oudh Cas 808 77 Ind Cas 125, Jan Gebind Singh v Abhairay Singh
 - (1913) 21 Ind Cas 318 (350) (Low Bur). Maun; Shuce Pe v Ma Yu Ma
- 4 (1927) A I R 1927 All 177 (1-0) 99 Ind Cas 2-0. Munation Alix Jagamilan Ban (Trespect densing mortgagers title to he knewledge-Tree proce's possession is advere against merigifer !

Note 85

the principle that possession cannot be adverse to a person who has no present right to possession, and hence is not cornect. Assuming the view to the correct, the onns of proving that the possession of a trespasser who dispossesses a usufructuary mortgagee in possession is adverse both to the mortgager and to the mortgagee, is oo the person setting up the adverse possession.

Where a trespassor onets a usufructuary mortgagee and enters of the procession of the mortgaged property, the possession of the trespasser is adverse to the mortgage and if it continues for twelve years, the trespasser will acquire the rights of the usufructuary mortgagee. The mortgagor's suit for redemption against such a trespasser will be governed by Article 148.6

Where a stranger pays off a usufractuary mortgage and gets into possession of the mortgaged property, he is not subrogated to the rights of the mortgage. Hence, his possession is adverse to the mortgager. But it has been held that where a stranger, believing in good faith that he is entitled to the equity of redemption, pays of a usufractuary mortgage, he is subrogated to the rights of the mortgage and hence his possession of the mortgaged property is only as mortgagee and is not adverse to the mortgager. (See Note 2 to Article 148, infra.)

Where a straoger renews a usufructuary mortgage in assertion of the own title to the equity of redemption, it has been held that from the date of such recewal the etrooger will be in adverse possession of the equity of redemption against the mortgagor. It is submitted

```
(1923) A I R 1928 Eab 147 (147, 148): 107 Ind Cas 612, Hansa v. Ramiok. (Do.)
```

against him.) (1924) A I R 1924 Oudh 40 (44): 26 Oudh Cas 308: 77 Ind Cas 125, Jai Gobind Singh v. Abhar Raj Singh. (Do.)

(1930) 1930 Mad W N 1148 (1151), Veeranna v. Venhadu. (Do).

```
shar v. Bala
```

(1875) 12 Bom H C R 180 (182, 183), Vithoba v. Gangaram.
 (1926) A I R 1926 Cal 752 (751,755): 93 Ind Cas 101, Ramanuj Rai v. Dakhineswar Rai.

(1936) A I R 1936 Mad 308 (309) : 161 Ind Cas 999, Veettil Kelu v.

me. (1995) I. 1991 216 (286), Aba v. Dhondubar. 8. (1937) A I R 1937 Mad 451 (455) : 172 Ind Cas 47, Moothachettiam Veetil

Kelu v. Chekkara Chappan.

9. (1901) 23 Bom S7 (91): 5 Bom L R 674, Parastam v. Sagaji.

^{(1903) 27} Bom 43 (68, 69): 4 Bom L R 721, Tarubai v. Venkantrao. (Do.) (1908) 80 All 119 (121): 5 All L Jone 83: 1908 All W N 25: 3 Mad L Tim 125, Ismdar Khan v. Ahamad Hussein.

that this view is open to doubt inasmuch as possession, in order to Arts. 142 & 144 be adverse, must be actual.

Notes 85-86

Where a stranger gets into possession of the mortgaged property through a usufructuary mortgagee who is in possession of the property and in collusion with such mortgagee, it has been held that the possession of such stranger is not adverse to the mortgagor.10 The reason given is that such stranger is bound by the same estopped as the mortgagee through whom be gets possession and cannot deny the mortgagor's title.

See also the undermentioned cases 11

86. Adverse possession against tenant, if adverse against landlord. - A landlord is not entitled to possession of property let out to a tenant, so long as the tenancy continues and hence, during the currency of the lease, the landlord cannot sue for possession of the property.2 It follows from this that where during the continuance of a lease the tenant is dispossessed by a third party who enters into possession of the property, the possession of such third party cannot be adverse to the landlord so long as the lease

10. (1937) A I R 1937 Mad 451-(454) 172 Ind Cas 47, Moothachettiam Veetil Kelu v Chekkara Chappan 11. (1890) 23 Cal 483 (492) 23 Ind App 8 6 Mad L Jour 43 6 Sar 669 (P C),

Imdad Hussain v Aziz-un-nissa. (Usufructuary mortgage by A to B 1.15 ., -. -

C is entitled to a certain underproprietary rights in the land-C's possession is adverse to the whole world including A from the date of the decree)

(1916) A I R 1916 Mad 911 (912) 81 Ind Cas 630, Chinnappa Theian v Hand - area D. He | Panama or secretal to neutroniuses morte 1000--Tinants tire of the

(1870) 2 N W P H C R 199 (199, 200), Ajoodhya Singh v turdharee. (Mortgagor redeeming possessory mortgage-Mortgagor's right against grantee from mortgagee arises on redemption of mortgage)

Note 86

- 1. (1926) A I R 1926 Mad 18 (20) 92 Ind C1= 20, Vecrashami Mudali v Venhatachala.
 - (1895) 19 Bom 139 (189), Vanayak Janardan v Matriat
- 2 (1909) 4 Ind Cas 80 (81) (Mad), Krashnan Nambudra v Secy of State (1926) A I R 1926 Mad 18 (18, 19) 92 Ind Ca- 30, Vecras carra Mudan v. Venhatachala Mudali
 - (1898) 21 Mad 288 (290) S Mad L Jear 121, East anadan Chemis I am-Lutti Servai (1896) 18 All 440 (448, 449) 1895 All W N 162 (F B , See Rom v Livi
 - (1924) A I R 1924 Cal 900 (302) | 78 I 3 Cas 4 f | L mena Chandra v Drana Charan
 - (1909) 2 Ind Cas 200 (210) 31 All 271 tons . Hatter v Watermad It to Satita

Note 86

Arts. 142 & 144 continues.3 The reason is that possession cannot be adverse to any one who has no present right of possession. Hence, a suit hy the landlord for possession against the trespasser will not be barred by limitation if it is brought within twelve years of the termination of the lease, although more than twelve years may have elapsed from the time when the trespasser first entered into possession.4 In Kathyayani v. Udoy Kumar,5 the Privy Council observed as follows:

(1917) A I R 1917 Mad 760 (761) : 89 Mad 1042 : 82 Ind Cas 198, Tirurengada Konan v. Veankalchala Konan. (Held, that though lessor cannot maintain a suit for possession, he can get a declaratory decrea declaring his title.)

(But see (1922) A I R 1922 Nag 216 (217) : 18 Nag L B 82 : 64 Ind Cas 902, Alibhas v. Shamrao.]

3. (1914) A I R 1914 Bom 296 (297); 38 Bom 53; 21 Ind Cas 763, Kirhsnadızıt v. Baldızıt.

(1918) A I R 1918 Cal 584 (585) : 40 Ind Cas 271, Harra v. Kunfa.

11919) A I R 1919 Cal 586 (587) : 41 Ind Cas 978. Ishan Chandra v. Nishi Chandra.

(1921) A I R 1921 Lah 17 (18) : 63 Ind Cas 717, Girdhars Lal v. Mt. Umda jan. (Following 4 Cal 327.)

(1921) A I R 1921 Bom 39 (39) : 45 Bom 1001 : 61 Ind Cas 594, Vishnu Bhikaji v. Babla Lacka.

(1895) 19 Bom 139 (199), Vinayak Janardan v. Mainai.

(1931) A I R 1931 Pat 89 (90) : 9 Pat 877 : 129 Ind Cas 678. Gangat Lal v. Wazıra Sıngh.

(1930) A I R 1930 Pat 476 (477) : 126 Ind Css 858, Bankey Behars Lal V. Gudo Choudhury.

(1924) A I R 1824 Cal 600 (609): 78 Ind Cas 520, Dusjendra Narain Roy v. Jogeschandra De. (1922) A I R 1922 Cal 87 (92) · 49 Cal 948 : 68 Ind Cas 126, Udoy Kumar

Dass v Katuans Debs. (1938) A I R 1838 Pat 220 (222): 175 Ind Cas 202, Gopt Ram Ram Chandra

v. Nitas Lal Dutt. (1905) 2 Cal L Jone 87 (94): 9 Cal W N 795, Harek Chand Babu v. B.joy haser against

> ٠d. Deb Rai. · Varain Roy. under Sircar

(1882) 9 Cal L R 317 (318), Prosonnomoundass v. Kalidas Roy. (1867) 8 Suth W R 444 (445), Ray Naram Roy v. Woomesh Chunder.) 4. (1907) 29 All 593 (595, 596) : 1907 All W N 185 : 4 All L Jour 726, Tham-man Pande v. Maharajah of Virianagaram.

(1886) 18 Cal 101 (103), Sharat Sundars Dabia v. Bhobo Pershad Khan.

(1881) 10 Cal 577 (580), Sheo Sohye Roy v. Luchmeshur Singh. (1892) 9 Cat 867 (369) : 12 Cal L. R 19, Krishna Cobind Dhur v. Hari Churn

(1868) 10 Suth W R 15 (19), Womesh Chunder Goopto v. Raj Narain Roy. (1926) A 1 R 1926 Mad 849 (850) . 92 Ind Cas 215, Manarikrama Zamorin Raja of Calicut v. Ventagurs Pottar.

(1925) A I R 1925 Oudh 307 (309) 27 Oudh Cas 201 : 81 Ind Cas 237. Mahaber Prasad v Ham Kumar. (Sale of groves-Subsequent relin-quishment to landlord by vendor-Landlord's suit against vendors-Art. 144 spplies-Time runs from relinquishment.)

(1695) 19 Pom 159 (139), Vanayal Janardan v. Mainas.

5, (1925) A I R 1925 P C 97 (93) . 52 Ind App 160 : 52 Cal 417 : 88 1nd Cas 110 (P O.)

Note 86

"It was argued that the lessor had a title to eject the Arts. 142 & 144 trespasser and that if he did not do so, the trespasser obtained a title by limitation against him as well as against the tenant and that as the latter is now deprived of the possession of the lands, she is entitled, in a question with the landlord, to an abatement of rent. There is a long and consistent body of authority to the opposite effect in India, and although the matter has not been made the subject of direct decision by this Board, their Lordships see no ground for doubting the soundness of the decisions referred to in the indement of the High Court.

"The duty of a tenant nuder a perpetual tenure such as the one in question is to protect himself against illegal encroach. ments hy others on the lands of which he has the exclusive possession. If he fails to do so, he cannot prejudice the landlord's claim for rent. The considerations which appear to their Lord. ships to be conclusive are those stated by Peacock, C. J., in Womesh Chunder Goopta v. Ray Narain Roys and connected appeal, and which are quoted in the judgment of the High Court. It has also been pointed out in other judgments that the land. lord cannot in the ordinary case know whether the possession of a particular area of land is adverse to the tenant or has taken place with his consent. Ho could not therefore safely sue an action at his own hand for electment of a trespasser, as he might always he met with the objection that the apparent trespass was acquiesced in by the tenant who can deal with the lands as he pleases."

Although, thus, the landlord's interest will not he affected by advorse possession against the tenant, the latter's interest can be acquired by adverse possession by a third party 63 Where the tenant's interest has thus been acquired by adverse possession for the statutory period by a third party, the landlord in whose favour the tenant relinquishes his rights cannot recover possession from the trespasser The reason is that in such a case the landlord merely sues as the transfered of the rights of the tenant and if the tonant is barred, the landlord also must be held to be harred?

Where the landlord's right to receive rent from the tenant is interfered with and a third party collects such rents from the tenant 6. (1869) 10 Suth W R 15 (19), Womesh Chunder v Ray Naram.

6a (1921) A I R 1921 Bom 38 (40) 61 Ind Cas 591 45 Bom 1001, Vulnu Bhikaji v Babla Lacka.

(1895) 19 Bom 188 (189), Vinayak Janardan v. Mainas (1933) A I R 1933 Pat 260 (270) . 145 Ind Cas 613, Ramdeyal Mahanta v.

Pitam Bours. .. r. or v-1 Cas CO, Bayoy Chand Mohalab v.

> ath Shaha v Surja Kanta Lakira 307 (30-) 27 Outh Cas 301 : 84 · sead . Ham Aurrar (Landlerd mer

own right and not as traction of

ten int's right !!

Note 86

Arts. 142 & 144 in assertion of his own right, the landlord's interest must be held to be in the adverse possession of the third party and the latter can acquire the landlord's interest by such adverse possession for the statutory period.8

> Where a tenant is in possession under a void lease and is dispossessed by a third person, the possession of such third person will he adverse to the landlord from the moment of his entry into possession. The reason is that in such a case the landlord is entitled to possession not withstanding the lease, as the lease is void.9

> Where the term of a lease has expired and the tenant is holding over with the landlord's consent and a trespasser dispossesses the tenant, the trespasser's possession will be adverse to the landlord. The reason is that the landlord is entitled to put an end to the tenancy immediately and sue for possession against the trespasser.10

> Where at the commencement of a lease the land is already in the possession of a trespasser, limitation is not saved by the granting of the lease and the landlord is not ontitled to a fresh period of limitation from the termination of the lease.11 The reason is that when once limitation has commenced to run, no subsequent disability or inability to sue can stop it.

> In some decisions,12 it has been held that even during the currency of a lease the landlord can sue for ejectment of a trespasser, for the purpose of putting the lessee in possession. Evon assuming that this view is correct, it will he seen that the person entitled to possession during the continuance of the lease is only the lessee and hence the possession of the trespasser can only be adverse to him and not to the landlord.

- 8. (1919) A T R 1919 Bom 45 (50) : 52 Ind Cas 770, Yamunabai v. Lagmanna. (1879) 9 Cal L R 576 (578), Parbutts Dasi v. Ram Chand.
 - (1922) A T R 1922 Cal 87 (92): 49 Cal 948 : 69 Ind Cas 126, Uday Kumar Das v. Katnans Debs.
 - (1898) 1898 Born P J 355, Mahader Vithal v. Vishunbhat Sherambhat. (1897) 1 Cal W N 246 (247), Gossain Mahendra Gir v Rajani Kant Doss. (But see (1909) 3 Ind Cas 122 (123) : 4 Mad L Tim 327 (328), Acharath
- Barran v. Mathammal.] 9. (1937) A 1 R 1937 Rang 160 (182) : 171 Ind Cas 648, Dashir Ahmad v. Maatschappij
- 10. (1905) 10 Cal W N 813 (314), Kisahwarnath Sahai v. Kali Shankar Sahai. 11. (1915) A I R 1915 Cal 675 (677) : 26 Ind Cas 436, Kalikananda Mukherjee
- . Biprodas Pal. 12 (1925) 112 Ind Cas 914 (315) (Pat), Basco Mahton v. Bhagwan Das.
 - (1923) A 1 R 1923 Cal 192 (193) : 70 Ind Cas 792, Playeumar Mandal v. All
 - (1918) A 1 R 1918 Mad 932 (984) : 39 Ind Cas 425. Katheri Muttee v. Kutti Chel. butts.
 - (1921) A J R 1921 Mad 42 (46) 41 Mad 937 62 Ind Cas 284, Mohideen Rowther v. Joyarama Awar (1915) A 1 R 1915 Mad 359 (959) . 26 Ind Cas 347, Soumas Ammaly Vellaya
 - Selhurangam. [See also (1926] A I R 1929 Pat 896 (397) . 118 Ind Cas 595, Kuldin Wahto v. Md Hashim.]

As to effect of abandonment by tenant, see Note 10 to Article 139, Arts, 142 & 144 ante.

Notes 86-87

87. Onus of proof. - It has been seen in Note 15 ante that nossession is presumptive evidence of a seisin in fee until the contrary is shown. It is therefore necessary, in every suit for possession, that the plaintiff should prove a better title than that of the defendant. He must succeed on the strength of his own title and not on the weakness of the defendant's case. Proof of proprietary title on the

Note 87

1. (1875) .: · s Series ī, . . . · to have : · of supe-١.

alleged by the defendants, but upon proof of that title which it is necessary for plaintiff to establish in order to disturb the possession of the defendants)

(1672) 18 Suth W R 91 (94, 99) . 2 Suther 619 4 Sar 788 (P C), Wase v. Bro. jendro Coomar Roy.

(1878) 4 Cal 727 (732) ; 6 Ind App 76 ; 3 See 865 · R and J 54 3 Ind Jun 222 (P C), Mersan Jehan Kadar v. Afsur Bahu.

(1928) A I R 1929 P C 130 (195) . 100 Ind Cas 392 (P C), Jasgobind Pandey v. Ramnandan Sahai 14000) A T B 1007 D C 10 100 . 107 T=2 Can 030 10 D.+ 000 , 81 Sind L R

> 7 Ind Cas 518 out title suing

(1903) 5 Bom L R 225 (227), Rajaram Tuljaram v Nanchand Tuljaram. (1870) 7 Bom H C B A C 82 (S6, S7), Dadabhas v Sub Collector of Broach

(1914) A I R 1914 Bom 152 (153) 38 Bom 240 : 28 Ind Cas 786, Sitaram Bhiman 1. Sadhu Auan. (1877) 8 Cat 79G (800) 1 Cat L R 259 8 Suther 48G 8 Sar 77G . 2 Ind Jur 147 (P C), Radha Prosad Singh v. Ram Coomar Singh.

(1882) 11 Cal L. R 395 (397), Doyanidh: Panda v Kela: Panda. (1693) 21 Cal 244 (247), Lep Singh Khasia v Nimar Khasia.

(1924) A I R 1924 Cal 555 (500) 80 Ind Cas 357, Lakshman Chandia v Takım Dhalı

(1925) A 1 R 1925 Cal 140 (142) 64 Ind Cas 91 51 Cal 953, Administrator General of Bengal & Bal Kussen Musser

(1925) A I R 1928 Ctl 343 (844) 108 Ind Cts 43, Lila Singh v. Chandra Badansınah

(1914) A I R 1914 Lah 38 (38) 26 Ind Cas 341, Amar Smith v Bhelis. (1908) 1908 Pun W R No (3 (p 241), Badar Din v Kale Khar

(1936) A I R 1936 Med 191 (192) 162 Ind Cas 37, Kadambers Decas om Uralan & Secretary of State

(1916) A 1 R 1916 Pat 189 (140) 37 Ind Cas 924, Ghanta Singh v Mt Bhagmans Reer

(1923) A I R 1923 Pat 72 (74) 2 Pat 75 68 1nd Cas 601 Abdur Rahmina Sheith Wals Mohamad (1934) A I R 1934 Pat C4 (65) 150 Ind Cas 336 Eurmath Mandar v Fara

Adhin Ray

(1926) A R 1926 Sind 9- (99) 97 Ind Cas 248, U ... tax v Vasn'an

Arts: 142 & 144 Note 87part of the plaintiff would, of course, he a hetter title than that of the defendant who is merely in possession of the property. As has heen seen in Note 4, a prior possession is itself proof of a hetter title as against a subsequent possessor without title.

But the mere fact that the plaintiff, in a suit for possession, shows a hetter title, proprietary or possessory, than that of the defendant, is not necessarily sufficient to entitle him to a decree for possession against the defendant. He has further to prove that such title is a subsisting one, that is, that such title has not been extinguished by lanse of time.2 For, it is a fundamental principle that it is the obligation of the plaintiff in every case to show that his action or suit is not harred by limitation.8

The above principles are applicable equally to cases falling under Article 142 or under Article 144. To deal first with cases falling under Article 142, that is cases where the plaintiff, while in possession, has been dispossessed or has discontinued possession, and he sues for possession, the onus in such cases will, according to the principles stated above, be on the plaintiff to show -

- 1. that he has a title to possession, whether a possessory or a proprietary one, which is superior to that of the defendant,
- 2. that his dispossession or discontinuance of possession, as that case may be, was within twelve years of the suit, or in other
 - (See also (1919) A I R 1919 P C 62 (68) . 43 Mad 253 : 46 Ind App 201 . 53 Ind Cas 288 (P C), Arunachalam Chetty v. Venkata. chalapathy.
 - (1929) A I R 1929 Nag S18 (S19) : 119 Ind Cas 701, Easturchand Bhshamchand Shop v. Almaram.]

· 567. Mashar

- 2. (1920) A I R 1920 Pat 256 (257) : 57 Ind Cas 151, Rammanohar v. Methila Presad Sahai. -------· 'lashuq Als.
 - (1903) 5 Bom L R 186 (190), Yamunabas v. Dhondi.

 - (1884) 10 Cal 577 (579, 580), Sheo Sohye Roy v. Luchmeshur Singh. (1871) 15 Suth W R 178 (179), Hurro Chunder Chowdhury v. Gobind Chun-
 - der Mostro. (1878) 1 Cal L R 531 (533), Mahendro Nath Muherjea v. Nafur Chunder Pal. (Court auction purchase-Possession taken under, is adverse if
 - purchase is void-Snit by owner after 12 years against transferce of purchaser is barred.)
 - (1918) A 1 R 1918 Cal 983 (984) ; 42 Ind Cas 709, Dohars foddar v. Nilmani Kundu.
 - (1922) A I It 1922 Lah 432 (433) : 69 1nd Cas 171, Duns v. Maleri Ram. (1920) A 1 B 1920 Nag 9 (11) : 54 Ind Cas 131, Ekoji Kunbi v. Akays Kunbi.
 - (1917) A I R 1917 Oudh 330 (310) ; 37 Ind Cas 715 ; 19 Oudh Cas 374, Hearsey v. Karam Singh.
 - (1910) 8 Ind Cas 1123 (1123) : 6 Nag L R 100, Baliram v. Silia.
- (1912) 17 Ind Cas 518 (519) (All), Mt. Sundar v. Sarascati.
- 3. See Note 29 to Section 3 ante. : 93 Ind Cas 260 W R 6 : 2 Suther ·n v. Maharajah Eager der Kusher Sungh.

words, that he was in actual or in constructive possession Arts, 142 & 144 within twelve years of the suit.4 It is not however necessary

Note 87

,5"

(1886) 11 Bom 216 (219) : 1886 Bom P J 325, Ramchandra Narayan v. Narayan Mahadev. (Oase under Article 127.)

(1869) 6 Bom H C R App Cas 125 (128), Pandurang Governd v. Balkreshna Hars.

(1978) 5 Cal 36 (37, 39), Mahomed Ibrahim v. Morrison,

(1868) 9 Suther W R 131 (132), Nobolishore Dey v. Ramkishen Mohurer.

But he is not bound to show that he had sufficient cause for not filing the suit earlier : see .-

(1930) A I R 1930 AH 193 (197) : 52 AH 501 : 124 Ind Cas 510 (F B), Mt. Ananti v. Chhannu.

4. (1889) 11 All 438 (446): 1889 All W N 155, Parmanand Misr v. Sahib

(1892) 14 All 193 (194) : 1892 All W N 55, Jafar Husam v. Mashuq Als. (1906) 28 All 479 (480) : 3 All L. Jour 334 : 1906 All W N 95, Deba v. Roh-

tags Mal. (1906) 28 All 760 (761) . 3 All L Jone 567 . 1906 All W N 234, Mazhar Singh

v. Behars Smah. (1905) 2 All L Jour 62 (63, 64) . 1905 All W N 14, Musafir Roy v. Mt.

Lagan Barta Eugr. (1915) A I R 1915 All 103 (107) . 28 Ind Cas 552, Anand Sarup v. Asad Als.

(1918) A I R 1916 All 181 (182) 88 Ind Cas 427, Sheopujan v. Sohbat Tewars. (1917) A I R 1917 All 42 (42): 40 Ind Cas 420, Champa Lal v. Mangal

Chand. (1923) A I R 1923 All 418 (419) : 71 Ind Cas 1033, Jharap Ras v. Jaint Ras.

(1923) A I R 1923 All 419 (420): 73 Ind Cas 212, Tariff v. Asa Ram. (1924) A I R 1924 All 920 (920) . 79 Ind Cas 951, Basu v. Mt. Nanhs.

(1926) A I R 1926 All 82 (83) . 89 Ind Cas 466, Komil Prasad v. Bharat Indu

(1928) A I R 1928 All 412 (413) 50 All 813 115 Ind Cas 791, Sita Ram v. Ram Sunder.

(1933) A I R 1933 All 775 (778) 55 All 209 148 Ind Cas 497, Kallan v. Mohammad Nabi Khan.

(1934) A I R 1934 All 993 (995, 997) 57 All 278. 152 Ind Cas 1 (P B), Bhindhya Chal Chand v. Ram Gharth. (1935) A I R 1935 All 774 (775) . 155 Ind Cas 821, Baboo Sough v. Ram

Manohar. (1882) 6 Born 503 (511), Muro Desas v. Ramchandra Desas.

(1892) 16 Bom 343 (346), Kashmath Sifaram v Shridhar Mahadev (A dispossessed—Selling property to B—Suit by B against C in possession

-B must prove A's possession within 12 years)
(1900) 25 Bom 287 (303) 2 Bom L R 1111, Hammantran v Secretary of State.

(1903) 27 Bom 43 (65) 4 Bom L R 721, Tarubas v. Venkat Rao.

(1869) 6 Bom H C R A C 125 (128), Pandurany Gound v. Balkrishna Hars (1900) 2 Bom L R 407 (409), Sitaram Raghunath v Navo Gound,

(1902) 4 Bom L R 801, Maruts v Banu Bas.

(1903) 5 Bom L R 225 (228, 229), Rajaram v. Nanachand.

(1906) 8 Bom L R 96 (98), Hars v. Dhonds.

(1908) 10 Bom L R 571 (573), Bhajwan Singh v Secretary of State.

(1877) 1877 Bom P J 114 (114), Villoba v. Shankar.

(1890) 1890 Bom P J 175, Zuna Francis v. Manoel Gustin Fernan.

(1915) A I R 1915 Bom 92 (93) 33 Bom 335 25 Ind Cas 21, Subappa Shankarappı v Venkappı Gelappı

(1923) A I R 1923 Bom Stil (361) 77 Ind Cas 50t, Lasterath G: 21.63 v. Ganesh Sitaram

(1923) A I R 1923 Bom 364 (365) 77 Ind Cas 473, Pariment, Waisako v. Basieri Siddarra

```
(1936) A I R 1936 Bom 201 (208, 209, 213) : 163 Ind Cas 632, Govindbha: v. Dahyabha:
```

(1883) 9 Cal 125 (127), Bhoothnath Chatterjee v. Kedarnath Banerjee. (1884) 10 Cal 374 (377, 378), Gopanl Chunder Chuckerbutty v. Nilmoney Mitter.

 (1997) 14 Cal 610 (614) 12 Ind Jur 61, Tulsh: Pershad v. Raja Misser.
 (1908) 7 Cal L Jour 414 (421); 12 Cal W N 273 . 3 Mad L Tim 212, Mura Shamsher Bahadur v. Run; Behart Lall.

(1925) 41 Cal L Jour 72 (79), Sarat Sundary Deby v. J. W. Laidle.

(1894) 3 Cal W N 763 (766), Rajendro Kumar v. Mohim Chandra. (1903) 7 Cal W N 291 (296), Keamuddi v. Hara Mohan Mondul.

(1926) 31 Cal W N GO (64), Lakhan Chandra Maio v. Gogal Sheikh. (1864) 1864 Suth W R 107 (107), Ishun Chunder Biswas v. Bissumbhur Biswas.

(1864) 1 Suth W R 67 (67), Kedarnath Mooherjee v. Mohesh Chunder Paulat.

(1865) 2 Suth W R 66 (89), Mirza Mohomed Hossam v. Surahutoonissa Khanum.

(1865) 2 Suth W R 153 (153), Kedarnath Acharjee v. Bhugwan Chunder Nandee.

(1865) 2 Suth W R 246 (247), Guroodoss Roy v. Huronath Roy, (1866) 6 Suth W R 110 (111), Gobind Chunder Shaha v. Kishen Chunder

Shaha.
(1866) 6 Suth W R 327 (325), Jugodumba Chowdhrain v. Rain Chunder Deo

Dukshee. (1867) 7 Suth W R 34 (34), Shanto Monee Goopiah v. Suttoabhama Goopiah,

(1867) 7 Suth W R 212 (213), Boolee Singh v. Hurobuns Narain Singh, (1867) 7 Suth W

(1867) 6 Suth W

(1675) ...

(1607) 8 Suth W

(1908) 9 Buth W R 155 (156), Dinobundhoo Suhaye v. James Furlong.

(1868) 9 Suth W R 251 (252), Bhiloo Mundul v. Motee Lall Ghose. (1868) 10 Suth W R 239 (239), Kedarnath Mahatah v. Kadumbinee Debbea.

(1869) 11 Suth V R 233 (239), Boydomath Surmah v. Ofan Bibee. (The plaintiff must prove date of dispossession as accurately as he can), (1869) 11 Suth W R 233 (254), Ram Lochun Choudhryv Joy Doorga Daissa. (1870) 18 Suth W R 23 (27) (P O), Deer Chinder Jobrag v. Deputy Collector

of Bhullocah. (1870) 14 Sath W R 51 (51), Hurro Naram Singh v. Boylunt Naram Singh.

(1870) 14 Suth W R 195 (195, 196), Busseroonissa Chowdrain v. Leelanund Singh.

(1871) 15 Suth W R 43 (43), Ameer Ale v. Indurjeet Kooer.

(1871) 15 Suth W R 178 (179), Hurro Chunder Chowdhry v. Gobind Chunder Hostro (Proof of dispossession on a particular date is not necessary— Possession within 12 years of the suit must be proved by plaintiff.)

(1872) 19 Suth W R 114 (118) [P O], Grija Kant Lahoryv, Hurrish Chunder. (1873) 19 Suth W R 192 (191) : 12 Beng L R 219, Gossandais Koondoo v. Siroo Keomares Debia.

(1873) 21 Suth W R 79 (79, 60), Kalee Naram Bose v. Anund Moyee Goopta. (1874) 21 Suth W R 282 (282, 283), Ahmed Ali v. Hares Chund.

- (1875) 24 Sath W R 315 (315, 316), Mahamed Kobeer v. Abdool Azeen,
- (1875) 24 Suth W R 389 (390), Shailh Ghogoolee v. Shailh Muzhur Hossein (1875) 24 Suth W R 417 (413), Khoda Newaz Chowdhry v. Brojendro Coomar.
- (1914) A I R 1914 Cal 703 (704) 16 Ind Cas 741, Nabadu ipendra Mocherjee
- v. Madhu Sudan Mandal (1916) A I R 1916 Cal 99 (99) 35 Ind Cas 72, Tomezuddi v. Mulai Chowhidar.
- (1917) A I R 1917 Cal 79 (80) 39 Ind Cas 356, Baskat Als v. Bassant
- Numa (1918) A I R 1918 Cal 32 (31) · 51 Ind Cas 70, Khedon Lal v. Rajendra
- Narain Singh. (1918) A I R 1918 Cal 414 (414) · 41 Ind Cas 690, Oli Sha v. Farid Sardar.
- (1919) A I R 1919 Cal 672 (673) . 45 Ind Cas 408, Maundra Chandra v. Sarabindu Ray.
- (1919) A I R 1919 Cal 674 (676) 46 Cal 103: 45 Ind Cas 864, Sachs Prasad v. Amar Nath Ras.
- v. Amar Nath Hai. (1922) A I R 1922 Cal 557 (565): 67 Ind Cas 673, Rakhal Chandra v. Durga
- Das. (1923) A I R 1923 Cal 286 (297) 66 Ind Cas 914, Ram Ratan Mandul v.
- Nulmon: Chowdhury (1925) A I R 1925 Cal 140 (142) · 51 Cal 953 84 Ind cas 91, Administrator
- General of Bengal v Ballassen Masser.

 (1925) A I R 1925 Cal 1920 (1931). 68 Ind Cas 561, Panchanon Sarbar v.
 Basanta Kumarı Dası. (The rule is the same in all cases, and the
 differences are only in the manner in which blantiff should prove his
- possession.) (1926) A I R 1926 Cal 115 (116): 87 Ind Cas 694. Rahimuddin Sarkar v.
- Umesh: Chandra. (1920) A I R 1926 Cal 1166 (1168): 97 Ind Cas 1003, Birendra Nath Ray v. Satis Chandra.
- (1928) A I R 1928 Cal 118 (121) . 105 Ind Cas 869, Gopal Chandra Mails v.
- Sm. Monmolius Dass. (1928) A I R 1928 Cal 765 (767) . 117 Ind Cas 606, Hardutt Ray Chamaria
- & Co. v. U 3sr Shaikk. (1930) A 1 R 1930 Cal 673 (676) 128 Ind Cas 195, Debendra Nath v. Nahar-
- mal Jaian. (1932) A I R 1932 Cal 300 (301): 59 Cal 344: 137 Ind Cas 279, Krishna
- Naudi v. Lokenath Mookerjs. (1935) A I R 1935 Cal 151 (153) : 151 Ind Cas 714, Haji Nayebali Sarkar v.
- Lalif Mohan Roy. (1938) A 1 R 1938 Cal 150 (150, 151) • 174 Ind Cas 511, Guru Charan Radra
- Pal v. Mafijuddin Molla
- (1901) 1901 Pun L R No. 59, Bula Singh v. Albel Singh.
- (1936) 39 Pun L R 365 (867), Labhoo Ram v. Bauss Dhar.
- [1921] A I R 1921 Lah 202 (203) , 59 Ind Cas 891, Mahomed v. Ude Bhan. (1927) A I R 1927 Lah 777 (778): 100 Ind Cas 336, Dullah v. Mt. Sardarni.
- (1928) A I R 1928 Lah 32 (88): 109 Ind Cas 320, Rahella v. Wasira. (1928) A I R 1928 Lah 98 (100): 8 Lah 655: 109 Ind Cas 266, Diam v.
- Khanu (Actual date of dispossession need not be proved.)
 (1928) A I R 1928 Lab 704 (701): 108 Ind Cas S74, Daulat Ram v. Ballu.
- (1928) A I R 1928 Lak 896 (895): 115 Ind Cas 534, Ghulam Muhannad v. v. Fatch Khan. (1929) A I R 1929 Lak 92 (93): 109 Ind Cas 694, Imam Din v. Man Singh.
- (1933) A I R 1933 Lah 627 (628): 143 Ind Cas 428, Skern v. Skarn Singh. (1934) A I R 1934 Lah 627 (628): 148 Ind Cas 620, Asa Sirgh v. Latif.
- (1936) A I R 1936 Lah 208 (203): 162 Ind Cas 330: 17 Lah 442, Sher Mahomed Shahbar Khan v. Sher Muhored Barre Ehan.
- (1916) A I R 1916 Mad 738 (738) : 29 Ind Cas 10, Kaliagerumal Keerudayan v. Chidambaram TL ir jirar .

- (1919) A I R 1919 Mad 31 (31): 52 Ind Cas 637, Sankaralinga Mudaliar v. Kuthalinga Mudaliar.
- (1922) A I R 1922 Mad 59 (60): 45 Mad 870: 67 Ind Cas 246. Vennam Ramiah v. Kusru Kolamma.
- (1926) A I R 1926 Mad 181 (182): 91 Ind Cas 454, Euppusams Mudaliar v. Chokkalinga Mudaliar.
- (1931) A I R 1931 Mad 282 (283) : 130 Ind Cas 815, Sevugan Chetty v. Kannappa Chetty.
- (1931) A I R 1931 Nad 644 (646): 133 Ind Cas 9: 54 Mad 622, Ramanathan Chettsar v. Lakshmannan Chettsar.
- (1936) A I R 1936 Mad 191 (192) : 162 Ind Cas 37, Kadambers Devsawam Uralan v. Secretary of State. (1918) A I R 1918 Nag 161 (161) : 48 Ind Cas 70, Champat v. Lazmi
- Narayan. (1923) A I R 1923 Nag 95 (96): 69 Ind Cas 883. Raghura; v. Ballabhdas.
- . .-
- (1939) A I R 1939 Nag 7 (9), Meherban Lalli Pinjara v. Yusuf Khan.
- (1915) A I R 1915 Oudh 201 (205): 18 Oudh Cas 43: 28 Ind Cas 855, Brifray Singh v. Ganga Baksh.
- (1917) A I R 1917 Oudh 20 (23) : 41 Ind Cas 80, Ratipal v. Bipin Chandra. (1925) A I R 1925 Oudh 42 (48): 79 Ind Cas 964; 27 Oudh Cas 130, Gur Sahas Kandıs v. Chheds.
 - (1931) A I R 1931 Oudh 177 (229) : 186 Ind Cas 642, Mahomed Assm Khan v. Mahomed Saadat Ali Khan.
 - (1934) A I R 1934 Oudh 21 (24) : 147 Ind Cas 805, Mahomed Mahmud v.
- Mahomed Afag. (1995) A I R 1935 Oudh 88 (89): 10 Luck 513: 158 Ind Cas 871, Ram
- Shankar v. Sheo Dutt. (1917) A I R 1917 Pat 528 (529) : 39 Ind Cas 777, Baker Husain v. Banjit
- Koer. (1919) A I R 1919 Pat 207 (210): 51 Ind Cas 801, Bhikhad Bhunjan v.
- Upendra Nath. (1920) A I R 1920 Pat 359 (360): 56 Ind Cas 40, Bhikhan Qassab v. Mardan
- Alt. (1920) A I R 1920 Pat 593 (599) : 54 Ind Cas 960. Kisun Prasad Sungh v.
- Surat Naram Prasad. (1921) A I R 1921 Pat 158 (159, 160): 58 Ind Cas 774, Inder Lal v. Ram
- Surat Kuer.
 - (1921) A I R 1921 Pat 277 (277) : 61 Ind Cas 78. Bahadur Als Khan v. Secretary of State.
- (1922) A I R 1922 Pat 33 (34), Nehari Ball v. Lakshmi Kantha Roy. (1923) A I R 1923 Pat 96 (93) : 66 Ind Cas 471, Balgobind Rumar v. Rai
- Behars Lol. (1923) A I R 1923 Pat 558 (560) 72 Ind Cas 648, Chattrapat Pratab Baha-
- dur Sahas v. C. G. Lees.
- (1924) A I R 1924 Pat 341 (342): 73 Ind Cas 41. Gayan: Sahu v. Balchand Sahu.
- (1924) A I R 1924 Pat 629 (630) : 8 Pat 258 : 81 Ind Cas 669, Ram Nath Saranss v. Gobardhan Pandey.
- (1926) A I R 1926 Pat 577 (579) : 97 Ind Cas 282, Kesho Prasad Singh v. Kirtarath.
- (1929) A I R 1929 Pat 529 (529): 122 Ind Cas 816, Gopal Sahu v. Ghansham Das.
- (1936) A I R 1936 Pat 147 (149, 160) : 161 Ind Cas 585, Mohamad Yusuf v. Mohamad Waheed. .. . #+0 3f-, ... f- ... D... .. Xf-, ... Xf-

••

to prove the actual date of dispossession, provided it is shown Arts. 142 & 144 to have happened within twelve years of the suit.5

Note 87

Proof of proprietary title in the plaintiff will not, by reference to the principle that possession follows title, shift the burden of proof on to the defendant to show that the plaintiff was not in possession

- (1918) A I R 1918 Low Bur 131 (152) : 41 Ind Cas 722, Appen Charan v. Kyause Ma
- (1920) A I R 1920 Low Bur 175 (175) : 56 Ind Cas 951, Muthia Chetty v. Seena V. Thevar.
- (1925) A I R 1925 Rang 111 (111) . 1 Rang 492 . 83 Ind Cas 182, Ma Shan Ma v. Somasundaram Cheity.
- (1929) A I R 1929 Rang 153 (154) : 7 Rang 85 : 117 Ind Cas 591, U Maung Gys v. Maung On Buin.
- 110201 . T T 1000 C ... 100 (001 001) . 07 C ... 3 T T 811 . 415 T... 47

17,

Khan. (1909) 2 Ind Cas 314 (315) (Mad), Madhava Gowdu v. Lohanatha Patro. (1910) 6 Ind Cas 667 (667) (Mad), Venkatarayudu v Sankarayya,

(1911) 10 Ind Cas 498 (500) (Mad), Subramania Reddy v. Ramachandra Reddy.

(1912) 14 Ind Cas 295 (297) (Mad), Prakkater: Parkum v Koram.

(1912) 15 Ind Cas 10 (11, 12) (All), Bhole Singh v. Bhagwant Singh. (1912) 15 Ind Cas 97 (97, 98, 99) (Mad), Adinarayana Iver v. Krishnan.

(1912) 15 Ind Cas 190 (190) (Mad), In re Rangacharsar.

(1912) 16 Ind Cas 741 (742) (Cal), Nabadwipendra Mukeries v. Madhusudan Mandal. (1918) 18 Ind Cas 17 (20) (P C), Dharani Kanta Lahiri v. Gabar Ali Khan,

(1918) 19 Ind Cas 222 (224) : 1918 Pun Re No. 19, Paras Ram v. Nathu Mal. (1918) 21 Ind Cas 335 (836) (Low Bur). Maung Tun U v. Mg. Muat Tha

Zan. (1925) 89 Ind Cas 687 (687) (Oudh), Main Mohammad v Sharaf Shah.

(1926) 93 Ind Cas 1006 (1007) (Lah), Rawal Balhsh v. Dolu Mai.

(1926) 94 Ind Cas 417 (417) (Lab), Rahmat Ullah v Nawab.

(1926) 96 Ind Cas 551 (552) (Pat), Kirat Singh v Sheoratan Singh.

(1926) 97 Ind Cas 267 (269) (Pat), Ghura Rat v. Harthar Prasad Sinha (1926) 98 Ind Cas 912 (915) (P B) (Cal), Lakhan Chandra Malo v. Gopal Sheikh.

(1927) 98 Ind Cas 1061 (1062) (Oudh), Sheo Dayal v Zohra.

(1929) 107 Ind Cas 779 (780) (Lab), Nur Khan v Faqir Abdullah. (1929) 115 Ind Cas 420 (421) (Lab), Basala v Piru Mal.

(1931) 134 Ind Cas 475 (476) (Oudh), Abdul Rahim v Mohammad Nazir.

(1933) 146 Ind Cas 448 (449) (Pat), Guhi Ram Singh v Adalat Mahato. (A I R 1921 Pat 237 (F B), Followed) (See also (1904) 27 All 153 (154) 1904 All W N 199, Eam Charan

Ray v Kauleshar Ray (1915) A I R 1915 Cal 536 (588) 30 Ind Cas 939, Sobhan Dalsh v Birendra Kishore Bahadur

(1930) A I R 1930 Pat 410 (411) 129 Ind Cas 543, Ragrath Pandey v Sham Shankar Duben (1909) 2 Ind Cts 314 (315) (Mad). Madhta Gowda v Lolanatha

Patro

> ad Cts 72 Ala tibar a Balka 1 (1937) Mad 147 1t5 Ind Cas 750 ured Eas Bahadur v Cocanada

Arts. 142 & 144 Note 87 within twelve years at the smt. The reason, as has been seen in Note 15 ante, is that the presumption that possession follows title is only an infaence of fact which a Court, in its discretion, may or may not draw according to the circumstances of the case. In Maharajah Koonear Baboo Nitrasur Singh v. Baboo Nand Loll Singh, which was a case arising under Bengal Regulation 3 of 1793, Lord Justice Turner, in delivening the judgment of the Board, observed as follows:

"The appellant is seeking to disturb the possession admitted to bave existed for about eleven years, of defendants, who insist on a possession of much longer duration as a statutory har to the suit. It clearly lies on him to remove that bar by satisfactory proof that the cause of action accrued to him (for that is the way in which the Regulation puts it) on a dispossession within twelve years next before the commencement of the suit: and, therefore, that he, or some person through whom he claims, was in possession during that period. No proof of anterior title. such as would be involved in the decision of the boundary question in his favour, can relieve him from this burden, or shift it upon his adversaries by compelling them to prove the time and manner of dispossession. The lands in question may have been part of Mouzah Gopaulpore, and as such may bave heen enjoyed by his ancestor, and yet he may have lost, by lapse of time, his right to recover them."

In Rajah Sahib Perhlad Sein v. Maharajah Rajender Kishore Sunghi, which was a case under the Act of 1859, their Lordships of the Privy Council did not think it necessary to go into the question of the title of the plaintiff, int held the suit to be barred on the ground that he failed to show his possession within twelve years of the suit. They observed as follows:

"The appellant comes into Court admitting upon the face of his plant that he is out of possession, and has been so for mere than ten years; and the date which be assigns to his dispossession is the 20th of March 1851. Upon the issue as settled by the Court, it lay upon him to establish that he was in possession up to that date; or, failing in that, that the date at which he or some former proprietor of Ramnuggur was last in possession is consistent with a right to institute this suit. Act No. VIII of 1859, Section 32, shows that the plaintiff is hound to satisfy the Court that his right of action is not harred by lapse of time."

In Mohima Chunder Mozomdar v. Mohes Chunder Neogi⁸ also, their Lordships of the Privy Council considered it unnecessary to go into the plaintif's title though be had proved several documents in 6. (1860) 8 Moo Ind App 199 (221): 1 Saith W R P C 51: 1 Suther 420: 1 Sar

^{744:} Sev 913n (P C) 7. (1869) 12 Moo Ind App 292 (337): 12 Suth W R P C G: 2 Suther 225; 2 Sar 430: 2 Beng L R 111 (P C).

^{8. (1888) 16} Ind App 23 (26): 16 Cal 473: 5 Sar 321 (P C).

support of his title, and held that the plaintiff must prove bis Arts. 142 & 144 possession within twelve years of the suit. They observed: Note 87

"The plaintiff must succeed by the strength of his own title and it is the opinion of their Lordships that in this case the onus is thrown upon the plaintiffs to prove their possession prior to the time when they were admittedly dispossessed, and at sometime within twelve years before the commencement of the suit, namely, for the two or three years prior to the year 1875 or 1874, and that it does not lie upon the defendants to shew that if fact the plaintiffs were so dispossessed."

In Dharani Kanta Lahri Choudhuri v. Gabar Ali Khan, the Privy Council again reiterated the view that in a suit for ejectment "it lay upon the plaintiffs to prove not only a title against the defendants but to prove that the plaintiffs had been dispossessed or discontinued to be in possession of the lands within the twell o years immediately preceding the commencement." See also the undermentioned cases in which it has been held that mere proof of plaintiffs title in a suit falling under Article 142 is not enough to entitle him to succeed and will not shift the burden on to the defendant to show that the dispossession or discontinuance, as the case may be, took place more than twelve years before suit A contrary view has, however, been held in some cases," namely that proof of title in case under Article 142 is sufficient, by reference to the presumption that

9. (1913) 18 Ind Cas 17 (20) (P C).

10. (1921) A I R 1921 Pat 237 (239) · 6 Pat L Jour 478 · 62 Ind Cas 1 (F B).
Sua Prasad Sunch v Hira Sunch. (Following 6 Moo Ind App 199)

(1867) 2 Agra 177 (178), Tara Singh v. Chaida Mull.

(1893) 1893 All W N 60 (61), Ram Dual v. Lal Bahadur. (1914) A I R 1914 All 207 (207) · 23 Ind Cas 521, Mt. Hulaso v Salamut.

Man.

Gaganendra Nath

· Alshhan Bahadoor

(1922) A I R 1922 Cal 557 (566, 567) . 67 Ind Cas 673, Rakhal Chandra Ghoss v Durgadas Samanta.

(1923) A I R 1923 Cal 286 (287) . 66 Ind Cas 914, Ram Ratan Mandul v Nilmon: Choudhury.

(1938) A I R 1938 Cal 206 (208) 175 Ind Cas 247, Ramendia Prosad v Baradaprosad Baru

(1917) A I R 1917 Lab 201 (204) 39 L C, 971, Maol Chand v. Arnar Nath (1930) A I R 1939 Nag 7 (9) 1938 Nag L Jour 418 (420) Maherban Lalli

Pinfara v Yusufkhan. (1921) A I R 1921 Pat 234 (235) 57 Ind Cas 741, Gajadhar Frand v. Mt Dulhin Gulab Kner

(1930) A I R 1930 Pat 134 (196) 123 Ind Cas 612, Eadrmath Upadhay a Baijnath Mandal.

(1936) A I R 1936 Rang 124 (125) 161 Ind Cas 833, Ma Prar Gri v C Shue Kyun.

(1928) 108 Ind Cas 732 (783) (Cal), Sattar Ducan v Sand in.

(1924) A I R 1924 All 924 (925). Shin Pravid Singh v. Wuneshwer. Dule.
 (1934) A I R 1934 Bom 907 (209-210). 58 Rm 397 4 40; 143 Ird va. v.2
 A 885 (F B), Krivling v. Madhusa.
 (1937) A I R 1937 Ouds 328 (329). 168 Ind Cas. 20; 13 I t. k.24., Srey

Moorat's Chhangoo

Arts. 142 & 144 possession follows title, to shift the burdeo on to the defendant. It is submitted that these decisions cacoot be accepted as laving down the correct law. The question whether the plaintiff has proved that he was in possession withio limitation and has thus discharged the onus that lies oo him, is one of fact, and in deciding the question the fact that the plaiotiff has title will be a factor which will come to his aid with more or less force according to the circumstances of the case.12 just as various other facts may lead to the inference that the plaintiff must have been in possession.13

- (1926) A I R 1926 Lah 13 (14) . 89 Ind Cas 995, Ismail v. Ibrahim. (1929) A I R 1929 Lah 669 (670) : 127 Ind Cas 11. Bhalla Singh v. Jagat Singh. (1933) A I R 1933 Lah 105 (106) : 141 Ind Cas 234, Mt. Raushan Ara Begum v. Mahmud Beg.
 - (1933) A I R 1933 Lah 722 (723) : 146 Ind Cas 725, Gannat Rai v. Har Dial. (Purporting to follow A I R 1916 P C 21.)
 - (1934) A I R 1934 Lah 1019 (1020), Bishambar Das v. Telu Ram.
 - (1917) A I R 1917 Pat 471 (472) : 41 Ind Cas 114, Midnapore Zamindary Co . Ltd v. Panday.
 - (1929) A I R 1929 Pat 529 (529): 122 Ind Cas 816, Gopal Sahu v. Ghan-shyam Das. (Waste land.) . (In
 - and. the defendant must prove his adverse possession for more than . .

plea. ince. not In

- the defendant, who must prove more than 12 years' adverse possession.]
- 12. (1927) A I R 1927 Nag 37 (37, 38) : 97 Ind Cas 1006, Tukaram Bairrao v. Tukaram Yeshwant. (1914) A I R 1914 All 287 (287) : 26 Ind Cas 86, Inayat Hussam v. Secre
 - tarn of State. (1922) A I R 1922 Bom 243 (244) . 66 Ind Cas 764 . 46 Bom 920, Mahamad-
 - sakeb Ibrahim Sakeb v. Tilokchand Abheerchand. (1915) A I R 1915 Cal 834 (834) : 27 Ind Cas 803, Sarozins Debi v. Kirti-
 - bash Das.
 - (1924) A I R 1924 Cal 855 (857): 78 Ind Cas 679: 51 Cal 669, Suresh Charles w State Vanta IIn gent fou more essession it. For possesnosses-
 - f.noia (1937) A I R 1937 Pat 422 (423) . 170 Ind Cas 385, Chandra Mohan Singh v Butu Msan.
 - [Sce also (1925) A I R 1925 Bom 477 (478): 89 Ind Cas 894, Ulawappa Basawaneppa Hugar v. Gadigewa Hugar. (The question was treated as one of evidence)]
- See (1917) A I R 1917 Cal 79 (80) 39 Ind Cas 356, Barkat Ali v. Basant Nunca. (In an ejectment suit plaintiff should prove his possession within the statutory period but if plaintiff is mentioned in the Record of Rights as the person in possession, then the burden is shrited on to the defendant and he must prove that plaintiff had been out of possession for more than the statutory period.)

Where the plaintiff does prove dispossession or discontinuance of Arts, 142 & 144 possession within twelve years of the snit, the onus will shift on to Note 87 the defendant to show that he has got a better title than the plaintiff

the defendant to show that he has got a better title than the plaintiff and is therefore entitled to retain possession as against the plaintiff. We have till now dealt with cases falling under Article 142, that is, cases where the plaintiff has been dispossessed or has discontinued his possession. Where the case is not one of dispossession or

is, cases where the plantiff has been dispossessed or has discontinued his possession. Where the case is not one of dispossession of discontinuance of possession, the defendant's possession must, at the time of his entry, have necessarily heen consistent with the plaintiff's title, for if the entry was inconsistent with the plaintiff's title it would operate as a dispossession of the plaintiff. A plaintiff therefore who wishes to claim the hencit of Article 144 must show —

- 1 that he is the owner of the plaint property,15 and
- that the defendant's entry into possession was not in contravention of his title, but derivative, permissive or otherwise consistent with his title.

[See also (1889) 1889 Bom P J 380 (380), Kass Ahmed v Kass Mohamed]

14 (1924) A I R 1924 Cai 977 (978), 70 Ind Cas 1938, Kaispraanna Bahadurs Hemanta Kumars (E g, by showing adverse possession for 12 years) (1924) A I R 1914 Cai 762 (763) 23 Ind Cas 1936, Hemchandra Chaudhar v. v. Sterritary of State (life can show a better title by proving adverse possession for 12 years)

(1901) 3 Bom L R 246 (249), Bas Fatan v, Emad Asha

(1869) 12 Suth W R 472 (473). Gour Paron v. Wooma Soonduree Debea.

(1875) 28 Suth W R 293 (295), Dastars Mohants v. Jugo Bundhoo Mohants. (1879) 1870 Pun Re No. 102, Sudama v Kesho.

(1889) 11 All 438 (443) 1899 All W N 155, Farmanand Mest v. Sahib Als.
 (1992) A I R 1932 Bom 386 (391) 56 Bom 501 140 Ind Cas 171, Secretary of State v Tatiyasahib

atsingh (Where not more than 12 years and br limitation, it tied him to an exten-

(1923) A I R 1923 Nag 2 (4) 68 Ind Cas 820, Salha Ram v Deoba.

(1925) A I R 1925 Oudh 42 (43) 27 Oudh Cas 130 79 Ind Cas 964, Gur Sahaj Kandu v Chhedi

(1916) A I R 1916 Low Bur 77 (78) 32 Ind Cas 568, Ma Nyem Me v Ma May -(1930) A I R 1930 Low Bur 175 (176) 56 Ind Cas 951, Muthia Chetty v

Scena Thetar 16, (1931) A I R 1931 P C 186 (187) 130 Ind Cas 315 10 Pat 407 58 Ind 4pp 29

(PC), Nageshuar Lux Roy v Bengal Coal Co , Ltd

(1902) 5 Oudh Cis 97 (103), Amir Hasan Khan v. Harpal Singh. (1888) 1888 Pun Re No. 116, Nihal Singh v. Jawanda.

(1903) 6 Oudh Cas 119 (128), Bhaquan Bathsh v Kamta Parshad.

(1917) A I R 1917 Low Bur C1 (C1) 42 Ind Cas 830, Maung Gys v U S31
Guol.

(1864) 1864 Suth W. R. Spe. No. 8 (4) Falso Kinat Singh v. Earn P. is (Where in a suit for possession the defendant is allored to be in the management of the suit property and the defindant dearing management, set, up-alrene tiffe the planning must show that the defendant's possession was for his lateful. Arts. 142 & 144 Note 87 Where the plaintiff proves these two elements or they are admitted by the defendants, the presumption is that the character of the possession continued till within the period of limitation up to the date alleged by the plaintiff as the date when the possession of the defendant became adverse to him. The burden then shifts to the defendant to show that his possession became adverse more than twelve years before suit. Where therefore the plaintiff lays the foundation for the applicability of Article 144, the onus is on the defendant to prove that he has been in adverse possession for more than twelve years before anit. The onus will not be discharged by

[1928] 111 Ind Cas 577 (589, 583): 55 Mad L Jour 302 (P C), Raja of Babbil. v. Ayyagara Sodemma. (Where the defendant was admitted to have been in possession for a long time and the plaintiff alleged that such possession was given only by way of security for doth, it was held on failure to prove such giving, the plaintiff would fail.

(1902-03) 2 Upp Bur Rul Evidence 7, Maung Tun v. Maung Pa U. [See also (1902) 1903 Pun Re No. 30, Din Muhammad v. Mehr

Dalsh.]

17. [1913] 22 Ind Cas C5 (G7): 9 Nag L R 179, Anjuman Islamia v. Hisamal. (Once the defendant is proved to have been in permissive possession, it

lies on him to prove that it became adverse subsequently.)
(1927) A I R 1937 Nag 10 (106): 22 Nag L R 176: 100 Ind Cas 446, Mt.
Deshrans v. Kishore Sugh.

(1922) A I R 1922 Oudh 231 (234), Nageshar Sahai v. Shiam Bahadur. 11893-1990 1893-1990 Low Bur Bul 360 (361), Ma Hla Bu v. Ma Te.

(1893-1900) 1893-1900 Low Bur Rul 360 (861), Ma Hla Bu v. Ma Te. 18.

ihrama.

(1919) A I R 1919 All 403 (401): 41 All 669: 52 Ind Cas 866, Jai Chand v. Gregar Singh.

(1934) A I R 1934 All 993 (997): 57 All 278: 152 Ind Cas 1 (F B), Bindhyachal Chand v. Bam Gharib.

(1879) 4 Bom 89 (93), Sambhubhat Karsandas v. Shivlaldas Sadashit das Desas

(1887) 1887 Bom P J 242, Ganga v. Nago.

(1923) A I R 1923 Bom 361 (361) - TT Ind Cas 506, Kashmath v. Canesh. (1936) 163 Ind Cas 897 (903) : 62 Cal L Jour 177 (192) : 63 Cal 300. Surendra Kumar Roy v. Ahmed Navad Choudhury.

(1879) 4 Cal L R 40 (41), Ogra Kant Choudhree v. Mohesh Chunder Sickdar. (1860) 12 Suth W R 250 (251), Ramdhun Satra v, Nobin Chunder

Chowdhry. (1922) A I R 1922 Cal 176 (177): 70 Ind Cas 602, Jankmath v. Baikuntha

(1923) A I R 1923 Cal 62 (85) ; 77 Ind Cas 564, Jobeda Khatun v. Tulss Charan Das.

Arts: 142 & 14 Note 87

- (1867) 1867 Pun Re No. 97, Kurm Newaz v. Kurreem Balsh.
- (1883) 1883 Pun Re No 122, Buta Shah v. Sobha Singh.
- (1927) A I R 1927 Lah 236 (236) : 100 Ind Cas 477, Kanshi Ram v. Taja,
- (1927) A I R 1927 Lah 619 (620); 103 Ind Cas 475, Als Muhammad v. Barkat
- (1929) A I R 1929 Lah 549 (550) : 117 Ind Cas 803 : 11 Lah 29, Jano v. Narsingh Das.
- (1934) A I R 1934 Lah 576 (579) 151 Ind Cas 490, Harnam Sungh v. Rana Upenderchand (Plaintiff conferred certain of his own lands to the defendant for temporary use. Later, plaintiff sought to resume the land given to the defendant when the defendants denied his title and claimed the land as being an owner of it)

Sira 1-ud-din v.

- (1933) A I R 1933 Nag 274 (276) . 30 Nag L R 18 : 150 Ind Cas 679, Mt. Jijibai v. Zabu.
- (1925) A I R 1925 Oudh 42 (43) 27 Oudh Cas 130 ; 79 Ind Cas 964, Gur Sahas Kandu v. Cheddi.
- (1931) A I R 1931 Oudh 177 (229) , 136 Ind Cas 642, Mahomed Azim v. Mahomed Saadat Als.
- (1931) A I R 1931 Oudh 392 (381) . 134 Ind Cas 599, Mt. Zahida Begam v.
- Mumtas Als.
- (1925) A I R 1925 Pat 789 (740) 86 Ind Cas 771, Rameshwar Singh Bahadur v Rit Lal Singh
- (1926) A I R 1926 Pat 577 (579) 97 Ind Cas 282, Kesho Prosad Suigh v. Kartarath.
- (1982) A I R 1932 Pat 145 (146): 11 Pat 165 . 142 Ind Cas 246. Ram Prasad v. Bindeshuari Prasad.
- (1916) A I R 1916 Low But 77 (78); 32 Ind Cas 568, Ma Nuem Me v. Ma
- May (1920) A I R 1920 Low Bur 175 (176) : 56 Ind Cas 951, Muthia Chetty v. Seena V Thevar.
- (1928) A I R 1928 Rang 13 (14) 5 Ra Aung Tun v Maung San Nyun 5 Rang 576 105 Ind Cas 598, Mauna
- (1928) A I R 1928 Rang 95 (95) , 104 Ind Cas 383, Ma Than Guaung v Ma Lun Baw.
- (1931) A I R 1931 Rang 40 (45) S Rang 556 129 Ind Cas 511, Mauna Sin v Manng So Min
- (1919) A I R 1919 Sand 98 (101) 53 Ind Cas 722 13 Sand L R 159, Nargandas v. Buto.
- (1918) 21 Ind Cas 935 (336) (Low Bur), Maung Tun U v. Mg Myat Tha Zan.
- (1931) 181 Ind Cas 461 (462) (AD), Mahomed Ishaq . Zindi Begum.
- (1923) A I R 1923 All 399 (400) 71 Ind Cas 265, Lalhu v. Lal Singh. When defendant's possession is not or is presumed not to be adverse, he must show adverse possession for 12 years)
- (1917) A I R 1917 All 233 (234) 40 Ind Cas 97, Shambhunath v Hars Rans (Possession of abids land in agricultural mahal prime focus permissive.)
 - [Sec also (1923) A I R 1923 All 565 (565) 74 Ind Ca. 579, Ragha Mal v. Abdus Sattar
 - (1903) 5 Bom L R 742 (744), Bandacharya v. Shrinin asicharya
 - (1930) A 1 R 1930 Oudh 310 (311) 126 Ind Cas 703, Taguti han v. Sheo Dularey
 - (1910) 5 Ind Cas 506 (306) (Mad). Eranhi'. Ial Kunhimmacha v Thoppil Pudia Vettil (In a suit for possesion, where defendant sets up adverse possession, it is not enough for the Court simply to find against defendent and for plaintif-The Court should find the period for which the defendant was in powersion and if for over the statutory period, whether the processed was only demante-Without a definite conclusion on these points, no finding as to Lim tallen -he aid to rearded in Ila n tid's laveur]]

Arts. 142 & 144 Note 87

proof of possession of an equivocal character. 18th Thus, where the possession of a widow might have been adverse, but might also under the circumstances have been obtained under some arrangement with the owner, and the matter is not cleared up, the onus cannot be said to be discharged. 18b

Where the plaintiff sues for possession on the allegation that the defendant's possession was permissive or derivative at its inception but the defendant denies such allegation and the plaintiff fails to prove the permissive or derivative nature of the possession, the case would be one of dispossession and the Article applicable would be 142. The plaintiff must in such a case show that he was in possession within twelve years of the sut.¹⁰ The contrary view held in the undermentioned cases ¹⁹³ is, it is suhmitted, not correct. The said decisions are all based upon considerations which have been shown in Nota 2 ante to be incorrect.

[But see (1932) A I R 1932 Lab 45 (46): 134 Ind Cas 97, Mehr Khan v. Sakhi Mahomed.]

19a (1902) 26 Bom 017 (621): 4 Bom L R 312, Balkrishna v. Govind, (1938) A I R 1939 Mad 454 (455): 178 Ind Cas 301, Atchayya v. Jalaluddin

18b (1902) 26 Born 617 (621) : 4 Born L R 312, Balkrishna v. Govind.

19. (1902) 24 All 90 (92): 1901 All W N 188, Hajihhan v. Baldeo Das.

(1911) 9 Ind Cas 812 (812) (All), Brifiel Sahu v. Rameshar Sahu.
 (1938) A I R 1938 Mad 415 (419), Alam Khan Sahib v. Karuppanaswami

Nadan. (1993) A I R 1933 Lah 893 (894) 147 Ind Cas 285, Hasan Mahomed v.

Akmed Bakhsh.
(1915) A I R 1915 Bom 92 (93) 39 Bom 835: 28 Ind Cas 24, Subbarpa Shankerappa v. Venkappa Golappa, (As soon as the part of the land

is found to be in possession of the defendant, the case must necessarily fall under Art. 142—Every suit for possession in which the plaintid alleges that he has had possession must fall under Article 142.)

(1925) A I R 1925 Nag 370 (370): 87 Ind Cas 1023, Singhuja v. Gambhirgi.

(1925) A I R 1925 Oudh 42 (43): 27 Oudh Cas 130: 79 Ind Cas 964, Gur Sahaj Kandu v. Chedi (1937) A I R 1937 All 124 (126): 167 Ind Cas 371, Ram Manchar v. Baboo

Singh.
(1920) 38 Mad L Jour 15 (15) (Critical Note on (1919) 41 All 669; A I R 1919

All 403, Ja: Chand v. Gerwar Singh.) (1897-1901) 2 Upp Bur Rul 461 (463), Maung Hman v. Maung Shwe Ka.

[See also [1906] 1906 Pan L R No. 73, Behari v. Sadho Mal.] 19a(1927) A I R 1927 Lah 32 (32). 91 Ind Cas 1047, Santa Singh v. Narain

19a (1927) A 1 H 1927 Lah 92 (32). 91 Ind Cas 1047, Santa Singh V. Narom Singh. (He can succeed merely on the strength of his title.)

(1925) A I B 1925 Mad 834 (835): 87 Ind Cas 386, Govinda Ramanuga v. Mahomed Exopf Saub. (Suit against alleged lessees—Lease denied and not proved—Suit also based on title—Art 144 applied)

(1982) A I R 1982 Oudh 46 (47): 7 Luck 250 · 137 Ind Cas 678, Suraj Bak v. Mahades Prasad,

(1929) 117 Ind Cas 384 (384) (Lah), Huralal v. Lalys

(1927) A I R 1927 Mad 287 (287). 99 Ind Cas 312, Ramanaujachariar v. Sundarachariar.
(1930) A I R 1930 Oudh 310 (311): 126 Ind Cas 703. Yakub Khan v. Sheo

Dularey (1938) A I R 1938 Sind 198 (201): 178 Ind Cas 690, Arab Jhanglu v. Panzal

Shah.

A suit for a declaration of title is unt one for possession of Arts. 142 & 144 immovable property and the question of onue in each suits is strictly not relevant to a discussion of the questinn of mus in possessory euits. The decisions, however, dealing with the question of onus in declaratory suits are so often referred to in enite under Articles 142 and 144, that it may not be without advantage to refer to them.

Where a person sues for a declaration of his proprietary title to immovable property, and proves such title, it is for the defendant to show that the title has been lost by the plaintiff by his (defendant'e) adverse possession of the property for the statutory period. 20 Where a person oues for a declaration of title to property on the ground that he has acquired such title to it by adverse possession for the requisite period, the onus is obviously on him to show his adversa possession for the statutory period.21 It is not for the defendant to show in such cases that the plaintiff was not in possession adversely to him for the requisite period. In Secretary of State for India v. ·Chellikani Rama Rao,23 a claim was preferred by an objector under the Madras Forest Act to certain property on the ground that he had, as against the Government, acquired title thereto by adverso possession for the requisite period. The claimant was in law in the same position as a person suing in the ordinary Courte of Justice for a declaration of right. It was contended that it was for the Government -defendant-who was prima facie the owner of the property (being the bed of a navigable river) to show that it had a subsisting title. Their Lordships of the Privy Council observed as follows:

"Nothing is hetter settled than that the onns of establishing title to property by reason of possession for a certain period hes upon the person asserting such possession. It is too late in the day to suggest the contrary of this proposition. If it were correct, it would be open to the possessor for a year or a day to say . 'I am here, be your title to the property over so good, you cannot turn me out until you have demonstrated that the possession of invself and my predecessors was not long enough to fulfil all the legal conditions "

⁽¹⁹⁸⁵⁾ A I R 1935 Mad 754 (755) 156 Ind Cas 591, Sulasman Rowther V. Dawood Khan Sahib, (1939) A I R 1939 Nag 7 (9), Maherbhan Lolls v Yusuf Khan Kallu.

^{20 (1917)} A I R 1917 All 180 (181) 87 Ind Cas 794, Mahamed Kamil v Habibullah

^{21. (1930)} A I R 1930 P C 281 (282) 11 Lah 638 57 Ind App 273 127 Ind Cas 537 (P C), Jahandadhhan v. Abdul Ghafur,

^{(1921) 4} I R 1921 Bom 177 (179) . 45 Bom 789 61 Ind Cas 440 Fara Baluant v. Secretary of State

⁽¹⁹²⁹⁾ A I R 1929 All 753 (753) 51 All 1042 119 Ind Cas 6, Kanharya Lai v. Girwar.

^{(1937) 167} Ind Cas S01 (S01) (Nag), Ramaja Gujar v Eunwarja Gujar 22. (1916) \ I R 1916 P C 21 (26, 27) 33 Mai 617 43 Ind App 132 35 Ind Cas 902 (P C).

Arts. 142 & 144 Note 87

proof of possession of an equivocal character. ¹⁸³ Thus, where the possession of a widow might have been adverse, but might also under the circumstances have been obtained under some arrangement with the owner, and the matter is not cleared up, the onus cannot be said to be discharged. ^{18b}

Where the plaintiff sues for possession on the allegation that the defendant's possession was permissive or derivative at its inception but the defendant denies such allegation and the plaintiff fails to prove the permissive or derivative nature of the possession, the case would be one of dispossession and the Article applicable would be 142. The plaintiff must in such a case show that he was in possession within twelve years of the suit. The contrary view held in the undermentioned cases has a submitted, not correct. The said decisions are all based upon considerations which have been shown in Note 2 ante to be incorrect.

```
[But see (1932) A I R 1932 Lah 45 (46) : 134 Ind Cas 97, Mehr Khan
v. Sakha Mahomed.]
```

18a (1902) 26 Bom 617 (621): 4 Bom I. R 312, Balkrishna v. Govind. (1938) A I R 1938 Mad 454 (455): 178 Ind Cas 301, Aichayya v. Jalaluddin Sahb.

18b(1902) 26 Bom 617 (621) : 4 Bom L R 312, Balkrishna v. Govind.

19, (1902) 24 All 90 (92) ; 1901 All W N 188, Hajikhan v. Baldeo Das.

(1911) 9 Ind Cas 812 (812) (All), Brajial Sahu v. Bameshar Sahu.

(1938) A I R 1938 Mad 415 (419), Alam Khan Sahib v. Karunpanaswams Nadan.

(1983) A I R 1933 Lah 893 (894) . 147 Ind Cas 285, Hasan Mahomed v. Ahmed Balhah.

(1915) A I R 1915 Bom 92 (93) · 39 Bom 335; 28 Ind Cas 24, Subbappa Shankerappa v. Venkappa Golappa. (As soon as the part of the land is found to be an possession of the defendant, the case must necessarily full under Art, 112—Every suit for possession in which the plaintiff

alleges that he has had possession must fall under Article 142.)
(1925) A I R 1925 Nag 370 (370): 87 Ind Cas 1023, Singhuji v. Gambhirji.

(1925) A I R 1925 Ondh 42 (43): 27 Ondh Cas 130: 79 Ind Cas 964, Gur Sahaj Kandu v. Chedi.

(1937) A I E 1937 All 124 (126) : 167 Ind Cas 371, Ram Manchar v. Baboo Singh

(1920) 38 Mad L Jour 15 (15) (Critical Note on (1919) 41 All 669; A I R 1919 All 403, Jay Chand v. Girwar Singh)

(1897-1901) 2 Upp Bur Rul 461 (463), Maung Hman v Maung Shwe Ka. (See also (1906) 1906 Pun L R No 73, Behars v. Sadho Mai]

19a(1927) A I R 1927 Lab 33 (32): 91 Ind Cas 1047, Santa Singh v. Narain Singh. (He can succeed merely on the strength of his title)

Singh. (He can succeed merely on the strength of his title) (1925) A I R 1925 Mad 834 (835): 87 Ind Cas 386, Govinda Ramanuja v. Mahomed Escof Sahib. (Suit sgainst alleged lessees—Lease denied and

not proved—Suit also based on title—Art. 144 applied)
(1932) A I R 1932 Ough 46 (47). 7 Luck 250: 137 Ind Cas 678, Sura; Bals
v. Manadeo Prasad.

(1929) 117 Ind Cas 384 (384) (Lah), Huralal v. Lalyi-

(1927) A I R 1927 Mad 287 (287): 99 Ind Cas 212, Ramanaujachariar v. Sundarachariar.

(1930) A I R 1930 Oudh 310 (311) 126 Ind Cas 703. Yakub Ehan v. Sheo Dularey.

(1938) A I R 1938 Sind 198 (201): 178 Ind Cas 690, Arab Jhanglu v. Panjal Shah.

A suit for a declaration of title is not one for possession of Arts. 142 & 144 immovable property and the question of onns in such suits is strictly not relevant to a discussion of the question of oous in possessory suits. The decisions, however, dealing with the question of onus io declaratory suits are so often referred to in suits under Articles 142 and 144, that it may not be without advantage to refer to them.

Where a person sues for a declaration of his proprietary title to immovable property, and proves such title, it is for the defendant to show that the title has been lost by the plaintiff by his (defendant'e) adverse possession of the property for the statutory period.20 Where a person sues for a declaration of title to property on the ground that he has acquired such title to it by adverse possession for the requisite period, the onus is obviously on him to show his adverse possession for the statutory period.21 It is not for the defendant to show in such cases that the plaintiff was not in possession adversely to him for the requisite period. In Secretary of State for India v. Chellikani Rama Rao, 22 a claim was preferred by an objector under the Madras Forest Act to certain property on the ground that he had, as against the Government, acquired title thereto by adverse possession for the requisite period. The claimant was in law in the same position as a person suing in the ordinary Courts of Justice for a declaration of right. It was contended that it was for the Government -defendant-who was prima facie the owner of the property (being the bed of a navigable river) to show that it had a subsisting title. Their Lordships of the Privy Council observed as follows:

"Nothing is better settled that the onus of establishing title to property by roason of possession for a certain period lies upon the person assertiog euch possession. It is too late in the day to suggest the cootrary of this propositioo. If it were correct, it would be open to the possessor for a year or a day to say 'I am here, be your title to the property ever so good. you cannot turn me out until you have demoostrated that the possession of myself and my predecessors was not long enough to fulfil all the legal conditions "

⁽¹⁹⁹⁵⁾ A I R 1935 Mad 754 (755) 156 Ind Cas 591. Subarman Bowther v. Dawood Khan Sahib.

⁽¹⁹³⁹⁾ A I R 1939 Nag 7 (9), Maherbhan Lalls v Yusuf Ehan Kallu.

^{20 (1917)} A I R 1917 All 130 (191) 37 Ind Cas 794, Mahomed Eamil v. Habi-

^{21. (1930)} A I R 1930 P C 281 (282) 11 Lah 638 57 Ind 4pp 273 127 Ind Car 537 (PC), Jahandadkhan v Abdul Ghafur. (1921) 4 I R 1921 Bom 177 (179) 45 Bom 789 61 Ind Cas 440, Var'a Bal.

want v Secretary of State (1929) A I R 1929 All 753 (753) 51 All 1042 119 Ind Cas 6, Kanhanga Lal

[·] Girwar. (1937) 167 Ind Cas 801 (801) (Nag), Ramaja tenjar v Kunsarja Gujar.

^{21. (1916)} A I R 1916 P C 21 (26 27) 33 Wal 617 43 Ind App 132 35 Ind Cas 902 (P C)

Arts. 142 & 144 Notes 87-88

"It would be contrary to all legal principles thus to permit the squatter to put the numer of the fundamental right to a negative proof upon the point of possession. * * * an ordinary suit for a declaration it cannot be doubted that the onus of establishing possession for the requisite period would rest upon the plaintiff * * * * nothing further is needed than the acknowledgment of the undisputed fact that these islands formed in the sea belonged to the Crown. That fact is fundamental: until adverse possession against the Crown is complete, that is to say, is for a period of sixty years, that fundamental fact remains and that fact forms 'subsisting title'."

The onus in such spits, i. e. spits for declaration of title on the ground of its having heen acquired by possession for a certain period, is not only to prove possession for the requisite period but also to prove that such possession had all the qualities of adequacy. continuity and exclusiveness which should qualify such adverse possession. In Moothavar v. Kunharan Kuttu.23 where the plaintiff sned for the establishment of his title to certain property, their Lordships of the Privy Council observed as follows:

"Standing a title in A, the alleged adverse possession of B must have all the qualities of adequacy, continuity and exclusiveness which should qualify such adverse possession. But the onus of establishing these things is on the adverse possessor. Accordingly, where the holder of a title proves that he too has heen exercising during the currency of his title various acts of possession, then the quality of these acts, even although they might have failed to constitute adverse possession as against another, may be ahundantly sufficient to destroy that adequacy and interrupt that exclusiveness and continuity which is demanded from any person challenging hy possession the title which he holds."

In a suit for confirmation of possession by declaration of title. the plaintiff must show not only that he is in possession but also that he has a title.24

Where A claims title to land which has been re-formed after submersion, the onus is no him to show that he was the owner thereof before the submersion.25 See also Note 70 ante.

88. Judgment against third party does not alter onus .--A judgment not inter partes cannot, in a suit for possession, alter the hurden of proof as hetween rival claimants in the suit.1

(1925) A I R 1925 Cal 1230 (1231) : 88 Ind Cas 567, Panchanon Sarkar v. Basantha Kumarı.

Note 88 1. (1937) A I R 1937 P C 69 (75): 167 Ind Cas 329: 16 Pat 258: 31 Sind L R 242 (P C), Kesho Prasad Singh v. Mt Bhagjogna Kuer.

^{23. (1922)} A I R 1922 P C 181 (184): 48 I. A. 395: 44 Mad 888: 66 I, C. 451 (P C). 24. (1873) 19 Suth W R 282 (282), Shark Oreer Als v. Shark Mukbool Als. 25. (1935) A I R 1935 P C 125 (126) : 156 Ind Cas 548 (P C). Tarakdas Acharjes v. Secretary of State

89. Question immaterial when evidence has been let in on Arts, 142 & 144. both sides. - Where evidence has been let in by both sides, it cannot matter subsequently by which party it was given. In other words, the question of burden of proof is immaterial where evidence has been let in on both sides

Notes 89-90

90. Starting point. - In a suit falling under Article 142, time runs from the date of dispossession, where the suit is based on dispossession, or if the suit is hased on discontinuance of possession, from the date of such discontinuance.2 Where, after a dispossession, the owner succeeds in getting back possession but is again subsequently dispossessed, time for a suit for possession will run from the second dispossession 3 Thus, where the plaintiff was ousted by Government and possession was subsequently restored to the plaintiff and then he was again ousted by the Government, it was held that

Note 89

1 (1917) A I R 1917 P C 18 (20) 44 Cal 858 44 Ind App 104 40 Ind Cas 837 (PC), Basanta Kumar Roy v. Secretary of State.

Note 90

- 1. (1918) A I R 1918 Lowr Bur 131 (181, 132, 134): 41 Ind Cas 722, Appan Charan v. Kyause Ma.
 - (1922) A I R 1922 Bom 243 (244), 46 Bom 920: 66 Ind Cas 764, Mahamad Sahib Ibrahim Sahib v. Tilohchand.

(1890) 1890 Bom P J 175, Zuna Francis v. Manoel,

- (1935) A I R 1935 Cal 702 (704). 159 Ind Cas 1101, Hemendra Nath v. Jnanendra Prasanna (Last full owner dispossessed—Subsequent interposition of widow's estate-Time runs from date of dispossession.)
- (1807) 2 Agra 235 (236), Saligram v. Meheenlal. (Decree-holder disrossessed after taking possession privately and not through Court)
- (1919) A I R 1919 Oudh 154 (157, 158) . 50 Ind Cas 180, Mt. Mahades Kunwar v. Mt Bahu Rans Sahiba.
- (1867) 2 Agra 125 (126), Seth Oodey Kurrun v Chart Ram.
- (1935) A I R 1935 Oudh 425 (426) 156 Ind Cas 92, Wahid Ali v Mahiceb Als Khan,
- (1935) A I R 1935 Cal 228 (229, 230), Inanada Prasanna v. Hemendra Nath.
- (1929) 119 Ind Cas 8 (9) (All), Baldeo v. Muloo.
- (1921) A I R 1921 Pat 36 (36) 57 1nd Cas 717 5 Pat L Jour 592, Madan Mohan Singh v. Brag Bihari Lal.
 - (as 'cond 111.3.

late ned

A's heirs-Date of dispossession or discontinuance is date when A left village)

(1921) A 1 R 1921 Pat 86 (86) 87 Ind Cas 717 5 Pat L Jour 592 Madan Mohan Singh v Braj Bihars Lai (Starting Point is date of days ssession or discontinuance and not date when plaintid ceases to or agr land)

8, (1925) A I R 1925 Cal 270 (271) 61 Ind Cas .79, Guruh Chemira I c. v. Lailuntha Nath Su gha.

Arts. 142 & 144 the plaintiff was entitled to reckon the period of limitation from the Note 90 date of the second dispossession.4

Suppose now that the rightful owner obtains possession from the defendant under a decree of Court, but the decree is subsequently reversed in appeal, with the result that the defendant is put back in possession by dispossessing the owner. Does such dispossession furnish a cause of action to the rightful owner and can he reckon limitation from each dispossession? There is, a difference of opinion on the point. In Degumbery Dossee v. Annundnath Rou. it was held that a brief possession for a few weeks under a decree subsequently set aside was not such a possession as to entitle the plaintiff to calculate limitation from that time. In Motee Singh v. Leelanund Singh, Loch, J., was of the opinion that possession given under an erroneous order of Court which is subsequently rectified and the party deprived of possession, cannot enable a plaintiff to defeat a defendant's plea of adverse possession. Glover, J., the other Judge in the same case, differed from that view and held that any possession not obtained by force or fraud, takes the case out of the statute of limitation. In Sayed Nasruddin v. Venkatesh Prabhu,7 it was held by the High Court of Bombay that an ouster by the Court consequent on the reversal of the decree under which possession had been given to the rightful owner, cannot furnish any cause of action for the rightful owner against the defendant who was previously in posseseion. This view was followed by the High Court of Madrae in Narayanan Chetty v. Kannammai Achi, and in Kaliaperumal v. Chidambaram.83 In Lakshmipathayya v. Ramachendra,8 the same High Court expressed a contrary view, namely, that the continuity

(1929) A I R 1929 Nag 129 (120): 117 Ind Cas 281, Narbada v. Chhoti. (There is no difference when the possession is wrongfully obtained with the assistance of a revenue officer and when it is obtained by a wrong-

(1936) 40 Cal W N 1019 (1020), Ramesh Chandra v. Dud Mehar Bibi. (1880) 6 Cal L Jonr 472 (487), Mar Wazirudan v. Lala Deoka Nandan.

(1906) 83 Cal 821 (825): 10 Cal W N 1081, Jonab Sheshh v. Maharaja Suraya Kant Acharyya.

(1878) 2 Cal L Jour 1 (6), Mamtasuddin Bhuian v. Barkatulla.

(1918) A I R 1918 Cal 48 (49) : 45 Ind Gas 548, Hart Das v. Debendro Ram Baner jea.

(1933) A I R 1933 Lah 22 (23) : 140 Ind Cas 530, Mohan Lai v. Fatoo.

[See also (1897) 1 Cal W N 569 (571), Jagubandhu Bhattacharjee v. Hari Mohun Ray. (Person entitled to property receiving rent and profits from Magistrats for period of attachment under S. 146, Crimmal P. C.—Limitation does not run against him during such period as he has constructive possession)]

4. (1864) 1864 Suth W R Spe No. 4 (6); 1 Hay 37; Marsh 13 (F B), Rance Surnomoyee v. The Collector of Rungpore.

5. (1864) 1864 Sath W R (Gap) 43 (43).

(1869) 11 Suth W R 49 (51, 52) : 2 Beng L R A C 173.

7, (1879) 5 Born 382 (386),

8. (1905) 28 Mad 338 (342). (Correctness doubted in A I R 1929 Nag 129.) 8a (1916) A I R 1916 Mad 738 (739) : 29 Ind Cas 10. (Following 11 Suth W R

9 (1917) A I R 1917 Mad 699 (691) : 35 Ind Cas 421.

of the possession which the defendant must establish for the Arts, 142 & 155 statutory period, would be broken by the delivery to the rightful owner of possession under a decree of the Court even though such decree was subsequently reversed in appeal. In Narbadi v. Chhoti.10 the Nagpur Judicial Commissioner's Court has also dissented from the Calcutta, Bombay and the earlier Madras views referred to above. It is submitted that the view expressed in the later Madras decision and by the Judicial Commissioner's Court of Nagpur is correct. In order that an owner may lose his property by the adverse possession of another, it is necessary not only that he should he out of possession, but that another should be in continuous possession during the whole of the period prescribed. It cannot be said that either of these elements exist, where, during such period, possession is obtained through Court by the owner under a decree even though such decree is reversed subsequently as being erroneous. It has been beld in the undermentioned case 11 of the Calcutta High Court that even a forcible dispossession by the true owner of the wrongdoer will prevent the running of time and that this would be so even if the wrongdoer should get back possession from the plantiff in pursuance of a decree under Section 9 of the Specific Relief Act, 1877.

Subsequent transactions between the defendants themselves will not give a fresh starting point. Certain villages helonging to a gamindar were sold for arrears of Government revenue and the purchaser was put into possession of the property sold. Subsequently, the Government made a fresh grant, by way of zamindari, of the villages, to the purchaser. It was held that the cause of action for the suit by the original zamindar on the ground that the revenue sale was not binding on him is the original dispossession and not the subsequent grant by the Government to the purchaser, which did not give a fresh cause of action. 118

In a suit falling under Articlo 144 of the Act, time runs from the date when the possession of the defendant becomes adverse to the plaintiff.12 The question when the possession of the defendant

^{10. (1929)} A I R 1929 Nag 129 (129) 117 Ind Cas 281.

 ^{(1905) 9} Cal W N 1061 (1064), Protap Chandra v Durgacharan (Dissenting from 12 Suth W R 9, 22 Suth W R 259 and 13 Cal L R 456 The decision is also opposed to the view expressed in 12 Suth W R 452)

¹¹a.(1874) 1 Ind App 335 (841) 22 Suth W R 187 3 Sar 39 3 Suther 30 (PC). Chastanyachundra v. Collector of Ganjam

^{12. (1910) 8} Ind Cas 1095 (1095) 33 All 224, Eam Lakhan Eas v Gazadhar

^{(1895) 19} Bom 809 (814), Moro Narayan Joshev Balaye Raghunath.

^{(1911) 9} Ind Cas 791 (791) 35 Mad 231, Partlasarath Naulen v Laksh mana Nashen. (1909) 2 Ind Cas 314 (315) (Mad), Madhata Gonadu v Lilaratha Patrao

⁽¹⁹²¹⁾ A I R 1921 Bom 48 (48) 45 Fom 570 59 Ind tas -05 Pamachandra Balwant v Balage Ganesh

^{(1891) 1891} Bom P J 282, Seshi : Lenkatramar

^{(1935) 164} Ind Cas 61 (62) 62 Cal 321 Tper franch for a Dicediorath Lundu

Arts. 142 & 144 Notes 90-91 becomes adverse to the plaintiff is one of fact to be decided with reference to the facts and circumstances of each case. ¹³ Possession after suit cannot be reckoned in computing the period of the defendant's adverse possession. ¹⁴

- 91. Defendant made party after limitation.—When a person is added as a defendant subsequent to the institution of a suit for possession, the suit as against him cannot be treated as having been instituted till the date on which he was made a party (see Section 22 ante). If, therefore, a person in possession is added as defendant more than twelve years after the accrual of the cause of action, the suit will be harred as against him. But where a defendant is impleaded in proper time but claims his share of the suit property in a written statement submitted twelve years after the cause of action, his claim will not be barred by limitation. See also Sections 3 and 22 carte.
 - (1934) A I R 1934 Nag 36 (38): 30 Nag L R 284: 148 Ind Cas 62, Ganpatz rao v. Vithaba:
 - (1919) A I R 1919 Cal 240 (242): 50 Ind Cas 45, Tarachand v. Secretary of State.
 - (1865) 2 Suth W R 185 (186), Eshan Chunder Rai v. Kalı Coomar Ras.
 - (1912) 16 Ind Cas 365 (367) 40 Cal 173 17 Cal W N 137: 16 Cal L J 202,
 Prosonno Kumar Mookerjee v. Sri Kantha Ray.
 (1923) A I R 1928 Lab 642 (648): 73 Ind Cas 887, Sarup Singh v. Pal
 - Singh. (1933) A I R 1933 Bom 217 (221): 57 Bom 709: 148 Ind Cas 885, Hamid-
 - 1933 A I R 1935 Bolm 217 (221): 57 Bolm 109: 125 Ind Cas 500, 125 May may a v. Nagandas. (1923) A I R 1928 Lah 910 (911) . 109 Ind Cas 561, Psara Ram v. Sohawa.
 - (1917) A I R 1917 Lah 236 (237): 87 Ind Cas 412, Arursingh v. Solakahan Singh.
 - (1916) A I R 1918 Oudh 228 (225) : 82 Ind Cas 876, Mahomed Mumias Als Rhan v. Harpal Singh.
- (1869) 12 Suth W R 44 (45), Shahabooddeen v. Moulvis Nadurcojuma. (1872) 13 Suth W E 88 (39), Nobin Chunder Roy v. Radha Pearse Dabea. 13. (1923)

been resumed and rettied with the samman by the dovelinear— Commencement of adverse possession of the samindar after the resumption and settlement with him must be determined with regard to the facts of each case)

14. (1916) A I R 1916 Mad 415 (417): 29 Ind Cas 168, Raina Bas v. Official Assignee.

. .

possession entired also for the benefit of Aut

Note 91

- (1927) A 1 R 1927 Cal 216 (218): 54 Cal 114: 100 1nd Cas 293, Mt. Asrufannessa Khatun v. Hem Chandra.
- (1912) 16 Ind Cas 420 (421) (Mad), Rangacharlu Chettsar v. Muthuharnapam Kothan.
- [1892] I5 Mad 19 (29), Byathamma v. Avulla.
 [1929] A I R 1929 Born 345 (347) : 58 Born 472 : 119 Ind Cas 656, Rayegarda Haymantraya v. Ramatingappa Shadgardarpa.

92. Tacking. - As has been seen in Note 87 ante, it is for Arts. 152 & 15 the defendant, in a suit governed by Article 144, to show that he has been in continuous adverse possession for twelve years. The word "defendant" in this Act includes persons from or through whom the defendant derives his liability to be sued. (See Note 17 ante.) In view of the said definition it is clear that, in computing the period of twelve years' adverse possession under Article 144. the adverse possession of the defendant in the suit can be tacked on to the adverse possession of the person from or through whom the defendant derives his liability to be sued. In other words, if the suit is one governed by Article 144, a succession of wrong. doers claiming through one another can defeat the right of the owner by tacking on the periods of their adverse possession, though the possession of each one of them has been only for a period of less than twelve years.1 But where the wrongdoers do not claim from or through one another, that is, if they are independent trespassers on the property, their possession cannot be tacked on together for the purpose of computing the period of limitation under the Article.2

Note 92

- (1919) A I R 1919 Pat 176 (177) 49 Ind Cas 767, Ratan Kumar Mahlo v Kangal Kumar Mahlo (Devisee of a trespasser can tack on the period of his devisor's possession to that of his own)
 - (1935) A I R 1935 Mad 449 (451), Rajagopala Nasdu v. Ramasubramania
 - Ayyar. (Herr of the trespasset.)
 (1920) A I R 1926 All 697 (698): 96 Ind Cas 687, Sajjad Hussam v. Qurban
 Als Beg.
 - (1892) 16 Bom 197 (199), Ali Saheb v Kaji Ahmed. (Auction-purchaser derivbe tacked, as

asam Man.

- (1923) A I R 1923 Rang 261 (265) . 1 Rang 176 75 Ind Cas 31, Ma M1 v. Hadjs Mahomed (Do)
- (1895) 19 Born 620 (621), Harsman v. Shuram (Purchaser from a vendor who remains in adverse possession against a prior vendee)
- (1894) 18 Born 37 (40), Namdet v. Ramachandra Gomaga. (Transferee from judgment-debtor who is in adverse possession of property after court-sale.)
- (1935) A I R 1935 Oudh 425 (427) 156 Ind Cas 92 7 11 Luck 297, Wahid Ali v. Mahboob Ali Khan.
- (1906) 3 All L. Jour 424 (425) 1906 All W N 184, Babu Pann v Banke Bikars
- (1921) A 1 R 1921 All 389 (391) 43 All 164 61 Ind Cas 546, Mt Earn Pure y. Budh Sen
- (1906) 9 Oudh Cas 230 (231, 232), Nageshar v. Sheo Mangal
- (1889) 13 Bom 100 (165), Padajırat v. Ramrat.
- (1916) A I R 1916 Oudh 50 (56, 57) 33 Ind Cas 371 18 Oudh Cas 2-9,
 - Ghisa Singh v. Gagraj Singh

f Mahrud.
v Fam I das.
savar v brininasa
trustors is effective

31 40 Ind Cas 327

Arts. 142 & 144 Note 92

Illustrations

- 1. A's land hecomes submerged under water, and, on its re-formation in situ, is taken possession of by Government. Some time later, on E's application that it may be delivered to him on the ground that it was a re-formation in situ of what was his land hefore, the Government gives the property to him and he enters into possession. B cannot, for the purpose of computing the period of twelve years under Article 144, tack on his possession
- (1934) A I R 1934 P C 23 (26): 147 Ind Cas 545: 61 Ind App 78: 61 Cal 262 (P C), Secretary of State v. Debendra Lal.
- (1920) AR THA Cas TEA (TEX) (411) TT. AL. . Dam . Call. Dem /Mambou of

sion.)

- (1915) A I R 1915 Oudh 143 (144); 28 Ind Cas 857; 18 Oudh Cas 61, Sheoambar Singh v. Balbhadra Singh. (Joint decree-holder cannot add the period of judgment-debtor's possession to his own possession to make up adverse possession against the other joint decree-holder.)
- (1898) 23 Bom 710 (714); 1 Bom L R 203, Mahamad v. Amanji. (1914) A I R 1914 Mad 505 (506); 16 Ind Cas 43 (44); 37 Mad 440, Veeramma
- v. Chinna Reddy.
- (1934) A I R 1934 Bom 278 (276): 58 Bom 410: 154 Ind Cas 824, Anant Ganpati v. Vishnu Rambhau.
- (1898) 2 Cal W N 815 (317), Guroo Churn Dutt v. Krishna Moni Gupta. (1916) A I R 1916 Oudh 50 (66, 57): 18 Oudh Cas 289: 33 Ind Cas 871,
- Ghisa Singh v. Gajraj Singh. (1935) A I R 1935 Oudh 425 (427): 156 Ind Cas 92 .11 Luck 297, Wahid Ali v. Mahbook Aliv Khan.
- (1906) 9 Oudh Cas 230 (231), Nageshar v. Sheo Mangal.
- (1912) 16 Ind Cas 225 (293) (Mad), Veeraragava Thathachriar v. Srinivasa Thathachariar. (1930) A I R 1930 Lab 809 (811): 129 Ind Cas 491, Abdul Ghani v. Bhagat
- Ram.
 1930 For 210 (212): 125 Ind Cas 231, Abbat Chart Thomas.
 Ram.
- (1938) A T R 1938 Bom 210 (212): 175 Ind Cas 93, Naru Shidu v. Kreshna Shidhu.

. Pramanich v.

- (1923) A I R 1923 Rang 261 (265); 75 Ind Cas S1: 1 Rang 176, Ma M: v. Hadys Mahomad.
- (1926) A 1 R 1926; Oudh 313 (314): 92 1nd Cas 625: 29 Oudh Cas 131, Sukhdeo v. Mt. Ram Dular. (1918) A 1 R 1918; Lab 21 (21): 47 1nd Cas 189, Hussain Baksh v. Pala
- Singh. (1921) A I R 1921 Bom 48 (48) . 45 Bom 570 : 59 Ind Cas 805, Ramchandra
- Balwant v. Balaji Ganesh (1933) A I R 1933 Cal 898 (900) · 60 Cal 1082 : 148 Ind Cas 1177, Abdul
- Latsf v Hamed Gaza.
 (1917) A I R 1917 Pat 471 (473) 41 1nd Cas 114: 2 Pat L Jour 506, Midna-
- pore Zamindari Co v. Panday Sardar. (1910) 5 Inl Cas 278 (275) (All), Gazadhar Ras v. Ramlakhan Ras.
- (1919) A 1 R 1919 Cal 766 (767) . 49 Ind Cas 751, Chandrao Daya Bhattacharjee v Chandrahala.
- (1895) 1895 Bum P J 216, Lahshman Vithujs v. Vithu Patlu.
 (1927) A I R 1927 Cai 488(489): 54 Cai 450: 103 Ind Cas 124, Satis Chandra Y. Hashem Mt.
- (1910) 8 Ini Cas 1035 (1095) (All), Ram Lakhan Ras v. Gajadhar Rai.

to that of the Government as he cannot be said to derive his Arts. 142 & 144 liability to he sued from or through the Government. Note 92

- 2. A, a mortgage of property from X, is in adverse possession of a right of fishery in water adjoining the property, and after redemption of the mortgage the mortgage continues in adverse possession of the fishery. X can tack on his possession to that of A. The mortgage and his mortgager cannot he said to he indeened not treamssers.⁴
- 3. Pending disputes as to the title to certain property, the Collector took possession of the disputed land in order to socure the Government revenue. Subsequently, it handed over the land to B and also paid him the surplus profits remaining after deducting the Government revenue. It turned out that the land really helonged to A who thereupon sued B for possession. It was held that B was not entitled, for the purposes of computing the period of limitation, to tack on his period of possession to that of the Government, insamuch as be did not claim under the Government.* Further, in that case, the possession of the Government was not a wrongful possession at all as it was entitled to attach and be in possession of the property for the purpose of collecting the Government revenue.

It is of course necessary that in order to complete a title by adverse possession by tacking on the periods of possession of two or more persons, that the possession of each of those persons must have been adverse to the true owner. There was a conflict of opinion, however, on the question whether the character of the possession of the different persons should be the same According to one view

(1989) A I R 1933 Nag 274 (277). SO Nag L R 18. 150 Ind Cas 679, Mt. Jsyldav v. Zabu (1849) 18 L J Q B 306 (309) L R 13 Q B 945. 13 Jur 915, Doe d. Mary

Carter v. Barnard (See (1938) A I R 1988 Cal 689 (690): 178 Ind Cas 646, Utchmatan Bibs v. Rajendra Nath.

(1935) A I R 1935 Pesh 193 (1855) 138 Ind Cas 963, Mulla Ahmad v. Faral Ahmad. (If second trespasser has obtained possession otherwise than through first, his possession cannot be tacked]] 3. (1917) A I R 1917 P C 18 (22) 44 Cal 858 44 Ind App 101. 40 Ind Cas 37

(PC), Basanta Kumar v Secretary of State 4. (1934) A I R 1934 P C 23 (28) 147 Ind Cos 545 61 Ind App 78 61 Cal 262

5. (1882) 5. All 1 (6, 7) 9 Ind App 99 5 Shome L. R. So. 4 Sar 352 (F.C.). Karan Single 1 Bar 4 II Khan

Singh v Bakar Ali Khan
 (1918) A I R 1918 Cal 592 (534)
 42 Ind Cas 884, Ganendra Noth Sanyal v Mohendra Wohns Debya (Period of posession under title cannot be tacked on to the period of posession without title to complete a title

by adverse possession) (1909) I Ind Cas 322 (324) 33 Bom 317, Amrita Raojin Shradhar Narayan. (1873) 10 Bom H C R 225 (230), Shidajirat n Antojirat

(1915) A. I. R. 1915. Mad. 121. (122). 21 Ind. Cas. 346. I canasicary Izer v. Permoye. (1923) A. I. R. 1923. Cal. S.2 (53, 54). 77 Ind. Cas. 364. I deca Eta. 787. Talan

(1923) A 1 R 1923 Cal S2 (e3, e4) To Ltd Cie Sci T Godd A 73 Feb Charan Das. Charan Das. (1934) A 1 R 1934 Pat 31 (82) 146 Ind Cas 811 Skaren Flagat v Lan

(1934) A 1 R 1934 Pat 81 (82) 146 Ind Cas 811 Staren 2 tajan v 200-Das Dragis

Arts. 152 & 144 this was necessary before any tacking could be allowed. Ea Thus, it was held that a mortgagee, for example, from a trespasser could not tack his possession on to that of his mortgagor so as to defeat the right of the true nwner.7 A contrary view, namely that the identity of the nature of possession was not necessary, was held in the undermentioned cases.8 The conflict must now be taken to have been settled by the decision of their Lordships of the Privy Conneil in Secretary of State v. Debendra Lal Khan, where their Lordships held that a mortgagor can tack on his possession to that of his mortgagee who had trespassed on the land of a third person adjoining the mortgaged property. Their Lordships observed: "There can be no question that a murtgagur, for the purposes of the Limitation Act. can avail himself of or 'tack' on to his own adverse possession the adverse possession of his mortgagee."

> It has been seen in Note S7 ante, that where a suit is one governed by Article 142 of the Act, the onus is on the plaintiff to show that he was dispossessed or that he discontinued his possession within twelve years of the snit. The question of the tacking of adverse possession by successive trespassers does not arise in such a case. Where, after the dispossession of the plaintiff but within twelve years thereof the trespasser coes out of possession and, after an interval, another trespasser gets into possession, the latter trespass operates as a fresh dispossession of the plaintiff. The reason is that during such interval, possession would, as seen in Note 64 ante, automatically revest in the nuner with the result that limita. tion which was running against him would cease so to run. The entry, therefore, of the second trespasser after the interval would be a fresh dispossession of the plaintiff furnishing a fresh starting point.

61(1914) A I R 1914 Lah 458 (460) : 22 Ind Cas 855, Baldeo Singh v. Mohan Singh.

(1875) 23 Soth W R 331 (332), Dhun Monee Choudhrain v. Golam Kasom. (Lessor and lessee)

(1918) A I R 1918 Oudh 214 (216) : 47 Ind Cas 697, Mt. Savyed-un-

missa v. Marku Lal. (Mortgagor and mortgagee.) (1922) A I R 1922 Bom 211 (212) ; 46 Bom 1009 ; 70 Ind Cas 912, Bai Pera v. Vals Mahomed.]

7. (1918) A 1 R 1918 Outh 214 (216) : 47 Ind Cas 637, Mt. Saiged-un-nissa v. Masku Lal.

(1859) 1889 Pun Re No. 169, Bharat Hiranand v. Lai Khan.

(1922) A 1 R 1922 Bom 211 (212) : 46 Bom 1009 : 70 Ind Cas 912, Bai Reva v. Valimohammad,

(1889) 1889 Pan Re No. 189, Ditu v. Devi Dial.

8. (1911) 10 Ind Cas 545 (546) (All), Bens Madho v. Debi Saran.

(1919) 16 Ind Cas 420 (421) (Mad), Rangacharlu Chettiar v. Muthukarapankotham, (1931) A 1 R 1931 All 18 (18, 19) : 52 All 976 : 130 1nd Cas 697, Praklad

Singh v. Barumal. 9. (1934) A 1 R 1934 P C 23 (23) : 147 Ind Cas 545 : 61 Ind App 78 : 61 Cal 26? (PC).

The position would be different where there is no interval Arts. 142 & 144 between the adverse possession of the first trespasser and that of the second, as where the first trespasser, while in possession, is himself dispossessed by the second trespasser. In such a case the possession does not revest in the owner after the date of the dispossession of the first trespasser, so that the enbsequent dispossession of the first trespasser by the second is not a dispossession of the owner. In Willis v. Earl Howe,10 which was a case in which the plaintiff had been dispossessed and the land had thereafter been in the adverse possession of several persons who did not claim through one another. it was contended that if the period of possession of each of them was less than the statutory period, the plaintiff could not lose his title. Kay, L J., observed as follows

"The effect of that (that is, the contention) would be that, if a series of occupiers not claiming under one another kept out the real owner for hundred years, time would only run against him when the last of such occupiers entered into possession. I am of opinion that it is not the law. A continuous adverse posses. sion for the statutory period, through a succession of persons not claiming under one another, does, in my opinion, bar the true owner "

The case of Agency Co. v. Short11 was distinguished on the ground that there was an interval between the periods of possession of two trespassers.

It follows, therefore, that a suit governed by Article 142 of the Act would be barred even if several persons, independent of one another, have been in adverse possession, each for less than the statutory period, provided the plaintiff has been continuously kept out of possession for twelve years after the dispossession 12 It has been, however, held in some cases13 that when the possession passes

10. (1893) L R 2 Ch 545 (559) 41 W R (Eng) 433 (435, 496) 62 L J Ch 690 2 R 427 · 69 L T 358

11. (1888) 37 W R (Eng) 433 (484) ; 58 L J P C 4 13 App Ca 793 59 L T 677 53 J P 192.

12. Halsbury (Hailsham Edition), Vol 20, page 745

(1912) 16 Ind Cas 420 (421) (Mad), Rangacharlu Chettiar . Muthukainapan Kothan

(1917) AIR 1917 Nag 7 (13) 14 Nag L R 82 43 Ind Cas 913 Ganno v Bent (1921) A I R 1921 Bom 49 (48) 45 Bom 570 59 Ind Cas 505, Eamachandra Baluant v. Balan Ganesh.

[See also (1931) A 1 R 1931 Oudh 177 (226) 136 Int tas 642. Mahomed Asim Khan v Mahomed Saadat Als Khan (At ruse 226 Nanavutta, J savs "In the present case all three alleged trespassers were in possession under a common agreement, namely the compromise and decree of the Court ')

(1930) A I R 1930 Lah 809 (811) 129 Int Cas 401 Cafue to the v. Bhagut Ram (1922) A 1 R 1922 Mad 59 (td) 45 Mad 870 67 In land to levels

Bantah v Kusru Ke'amria] 18, See cases cated in Foct-Note (4) to Note 75 ante.

عمم

Notes 92-93

Arts. 142 & 144 from the first to the second trespasser, there is a momentary restoration of the true title to possession. It is submitted that this view is not correct.

> 93. Effect of adverse possession. - As has been seen in the Notes to Section 28 ante, where A is in adverse possession of land helonging to B for a period of twelve years or more, B's title is extinguished, and A gets a good title to the land,1 If A is subsequently dispossessed by B, A is entitled to sue B for possession and B cannot resist the same on the ground that he had title and was rightly in possession. By such dispossession B is not remitted to his

Note 98

- 1. See Note 6 to Section 28, supra.
 - [See also (1926) A I R 1926 Ondh 226 (227); 92 Ind Cas 247, Sheo-Nandan v. Hira Lal.
 - (1877) 3 Cal 224 (226, 227), Gossain Dass Chunder v. Issur Chunder
 - (1886) 1886 Pun Re No. 16, Daya Ram v. Badrs Mal.
 - (1927) A I R 1927 Mad 244 (245): 98 Ind Cas 860. Raman Menon v. Madhavan Menon. (Adverse possession of tarwad property by member of Tavazhi-Right of tarwad is lost.)
 - (1912) 17 Ind Cas 148 (149): 37 Bom 37, Maganchand Fulchand v. Vithalrao Kamalrao.
 - (1918) A I R 1918 Cal 950 (951): 83 Ind Cas 957: 45 Cal 756, Bhusan Chandra Ghose v. Sarhanta Banerjee. (Case under Bengal Tenancy Act.)
 - (1930) A I R 1930 All 441 (442): 125 Ind Cas 475, Baif Nath Prasad v. Dharam Pal Singh.
 - (1920) A I R 1920 Nag 51 (51): 16 Nag L R 87: 55 Ind Cas 499, Laxman v. Govind.
 - (1902) 12 Mad L Jour 887 (888), Kone Gounden v. Bola Naicken.
 - (1909) 3 Ind Cas 599 (599): 1909 Pun Re No. 85, Dhan Singh v. Har Narain. (Entry in want-ul-arz after defendants had acquired title by adverse possession that plaintiffs can take the land back when they return-No trust created in plaintiff's favour.)
 - (1904) 27 Mad 262 (268), Venkata Krishna Row v. Venkappa. (1927) A I R 1927 Nag 330 (330) :- 103 Ind Cas 697, Krishna v. Nara-
 - yan.
 - (1935) A I R 1935 Pat 164 (165) : 155 Ind Cas 1094 : 14 Pat 424, Nando Kahar v. Bhup Navam Singh.
 - (1867) 11 Moo Ind App 345 (863) : 7 Suth W R 24 : 1 Suther 676 : 2 Sar 284 (P C), Gunga Gobind Mundul v. Collector of 24 Pergunnahs,
 - (1933) A I R 1933 Oudh 427 (429): 143 Ind Cas 831, Abdur Rahman Khan v. Ahmad Khan.]
- 2. See Note 6 to Section 28, supra.
 - [See also (1897) 21 Bom 509 (514), Budesab v. Hanmanta.
 - (1923) A I R 1923 Mad 633 (634) : 72 Ind Cas 635, Ammakannu Ammal v. Narayanasams Mudaliar.
 - (1889) 14 Bom 222 (226), Hargovandas Lakshmidas v. Bajibhai Jijibhas. (Possessory owner acquires absolute title and is entitled to sue for and obtain a declaration of such statutory title)
 - (1867) 11 Moo Ind App 345 (361): 7 Suth W R 21: 1 Suther 676: 2 Sar 284 (P C), Gunga Gobind Mundal v. Collector of 24-Pergunahs]

old title.3 In the undermentioned case,4 A who was in adverse Arts, 142 & 144 possession for the statutory period was thereafter dispossessed by B. Notes 93-95 A then sued B for possession within twelve years of such dispossession. It was held that A was entitled to recover.

Where the principal right to sue for possession is extinguished under Section 28, rights accessory thereto will also be extinguished.5

- 94. Adverse possessor can get only what quondam owner had. - See Note 6 to Section 28, ante.
- 95. Adverse possessor gets a title only to the interest he purports to prescribe for. - It has been seen in Note 6 to Section 28 ante, that the right that is acquired by prescription cannot be anything more than what the wrongdoer purported to prescribe for. Thus, where a Hindu woman enters into possession of property to which she is not entitled, claiming only the limited estate of a Hindu woman under the Hindu law, she will acquire a limited estate by prescription.1 Similarly, where the wrongdoer
 - 3 See Note 6 to Section 28, supra.
 - (See also (1925) A I R 1925 Oudh 20 (23) 84 Ind Cas 98, Mt. Mahmud-un-nissa v Zabid Rasa,
 - (1899) 21 All 204 (208) : 1899 All W N 36, Dalap Ras v. Deols Ras.
 - (1878) 20 Suth W R 114 (115) . II Beng L R 237, Brindabun Chunder Roy v. Tara Chand Banersee.
 - (1920) A I R 1920 Cat 800 (803) : 60 Ind Cas 165, Kassim Hassan v.
 - Нагта Велип. (1928) A I R 1928 Nag 280 (280): 109 Ind Cas 401, Kapoor v. Nanhs.
 - (1873) 21 W R (Eng) 693, Bryan v. Cowdal
 - (1858) 27 L J Ex 297 (299) 114 R R 1039 . 1 F & F 27, Brassington v Lleuellyn
 - (1907) 6 Cal L Jour 621 (636), Lelabats Mesrain v Beshun Chobey, (Title to office of shebast and to endowed property)]
- 4 (1901) 21 Mad 387 (895, 896) 5 Cal W N 545 23 Ind App 81 . 3 Bom L R 803 7 Sar 819 (P C), Khadanga Garu v. Mahapatrulu Garu,
- 5. See Note 6 to Section 28, supra.

(See also (1931) 4 I R 1931 Lah 648 (649) . 134 Ind Cas 1106, Karam Dad v. Rehmat 1

Note 95

- 1. (1928) A I R 1928 Nag 829 (831) 114 Ind Cts 454, Makepat v Muhundrao. (1931) A I R 1931 All 450 (451) 133 Ind C1s 790, Shantar Lal v Damedar Das.
 - (1933) A I R 1933 All 822 (824, 825) 147 Ind Cas 220, Dungar Singh v. Mt Maid Kunwar
 - (1914) A I R 1914 Born 47 (50) SS Bom 227 . 24 Ind Cas 716, Persah Kasımsab v Gurappa Ersappa. (1914) A I R 1914 Nag 81 (82) 10 Nag L R 35 23 Ind Cas 719, Sheo Lal
 - v. Mt. Shen Lagra (1926) A I R 1926 Oudh 497 (498) 95 Ind Cas 482, Mt Ram Rays v Eastbhaddar.
 - (1928) A I R 1928 Oudh 227 (228) 112 Ind Cas 400 Febars v Familianas. (1928) A I R 1928 Pat 220 (221) 7 Pat 163 107 Ind Cas 151, Suray Lalls Singh v. Tital Dhart Singh

Arts. 142 & 144 Note 95

enters into possession claiming only to be a tenant,2 or a manager,

- 2. (1928) A I R 1928 P C 146 (149): 7 Pat 649: 109 1nd Cas 663: 55 Ind App 212 (P C), Kamalhya Narayan Singh v. Ram Raksha Singh.
- (1936) A I R 1936 P C 183 (187): 162 Ind Cas 465: 63 Ind App 261: 59 Mad 809 (P C), Ponnambala v. Persyanan Chetty.
 - (1908) 35 Cal 470 (476): 12 Cal W N 636: 7 Cal L Jour 499, Ichharam Singh v. Nilmoney Bahida. (As tenant.)
- (1905) 2 Cal L Jour 125 (135), Ishan Chandra Mitter v. Raja Ramranjan. (When a tenant takes possession of lands outside his tenancy and professes to do so in his character as tenant, the landlord is dispossessed in a limited sense, in other words, he is deprived of actual or khas possession of the lands but not of proprietary possession of possession by receipt of rent.)
- (1922) A I R 1922 Cal 185 (186); 68 Ind Cas 1003, Unr Ali Sardar v. Shadhar Behara.
- (1909) 3 Ind Cas 431 (432) (Cal), Barail Badri Sahi v. Chamra Uraon.
- (1933) A I R 1933 Pat 269 (270) : 145 Ind Cas 613, Ramdeyal Mahants v. Petam Bours.
- (1914) A I R 1914 Cal 51 (53) : 20 Ind Cas 823, Protap Narain Muherjee v. Biraj Dasi.
- (1922) A I R 1922 Cal 193 (194): 69 Ind Cas 7, Satyendra Nath Banerjee v. Erishnasakha Kar.
- (1924) A I R 1924 Cal 45 (47): 50 Cal 487: 74 Ind Cas 193, Bhairabendra Narain v. Rasendra Narain.
- (1914) A I R 1914 Cal 196 (197) : 20 Ind Cas 661, Probhabat; Dasi v. Taibaturenessa.
- (1919) A I R 1919 Cal 124 (124) . 49 Ind Cas 437, Subal Chandra Chowdhury
- v. Suvankar Barna. (1926) A I R 1926 Cal P52 (953) : 95 Ind Cas 101, Sadanand Mandal v. Jyo-
- tish Kanta Bay. (1913) 19 1nd Can 863 (851) (Cal), Motilal Roy v. Kalu Mandal.
- (1914) A I R 1914 Cal 743 (743) : 18 Ind Cas 616, Kali Charan Saha v.
- Dabirrudin Ahammad. (1925) A I R 1925 Mad 1226 (1227) : 88 Ind Cas 924, Rama Rao v. Appu.
 - (1925) A I R 1925 Cal 1189 (1191) : 89 Ind Cas 747, Suarnamous v. Sourin-
- dra Nath. (1927) A I R 1927 Lah 39 (39): 98 Ind Cas 870, Sohela v. Baggu Singh.
- (1915) A 1 R 1915 Cal 738 (738) . 28 1nd Cas 708, Panchkars Chattapadhya v. Maharaj Bahadur Singh.
- (1918) A I R 1918 Oudh 122 (123) : 47 Ind Cas 930, Sheo Gobind v. Ambika Prasad.
- (1937) A 1 R 1937 Pat 422 (423, 424); 170 1nd Cas 335, Chandra Mohan Smah v. Butu Mian.
- (1934) A I R 1934 Pat 339 (340, 341); 149 1nd Cas 453, Kaineshwar Singh Bahadur v. Faturs Missra.
- (1928) A I R 1928 Cal 47 (48): 105 1nd Cas 85, Jamiruddee Naskar v. Basanta Kumar Roy.
- (1922) A I R 1922 Pat 619 (622, 621); 65 Ind Cas 882, Bhonulai Chowdhury v. W. A. Vincent.
- (1934) A I R 1934 Pat 458 (461) : 150 1nd Cas 102, Nalinikanta Mukerji v. Gobinda Ramanui Das. (1932) A I R 1932 Mad S28 (332) : 137 Ind Cas 487, Periyanan Chetty v.
- Gounda Rao. (1904) 9 Cal W N 292 (299) Bagdu Mashi v. Durga Prasad Singha.
- (1920) A I R 1920 Oudh 147 (149) : 60 Ind Cas 717, Fazal Hag v. Rugarya
- Khanam.
- (1912) 16 1nd Cas 53 (55) (Mad), Narsna Udpa v. Venkataramana Bhatta.

trustee or mutawalli of an institution,3 he will, after twelve years of Arts. 142 & 144 such possession, acquire only the right claimed. On the same principle, where A and B are in possession of property belonging only to A as the joint property of A and B, such enjoyment by B is adverse to A, so far as his separate right thereto is concerned, and, if A's suit for separate possession is barred, his right to separate possession would be barred with the consequence that B would acquire a right to joint possession.4 See also the undermentioned cases 5 In the case

- (1929) A I R 1929 Bom 174 (175) 117 Ind Cas 438, Narhar Narayan v. Ganrats Hart.
- (1883) 7 Bom 96 (99), Mardin Saiba v. Nagapa.
- 3. (1888) 12 Bom 322 (324), Muln Bhulabhan v Manohar Ganesh. (As
- manager of idol.) (1915) A I R 1915 Mad 1003 (1009): 26 Ind Cas 841, Ambalayana Pandara
 - sanadhi Atergal v. Minakshu Sundereswara Devastanam. (Do) (1926) A I R 1926 Mad 496 (500); 94 Ind Cas 489, Brahmayya v. Madhuram, (Do)
 - (1928) A I R 1928 Mad 268 (270, 271) 108 Ind Cas 199, Pichai Pellai v.
 - Lingam Iyer, (As trustee) (1914) A I R 1914 Mad 477 (479, 480) 87 Mad 873 14 Ind Cas 168, Pattarhara Manahkal Kuppen v Choorakhapathul Mundehotts! (Do)
 - (1930) A I R 1930 All 866 (868) 129 Ind Cas 375, Abdul Alim v Abdul Hamid (As mutawall)
- 7 Sar 819 (P C), Khadanga Garu v. Mahapatrulu Garu, (Art. 142 applies to such cases,)
 - (1913) 18 Ind Cas 869 (872, 875) (Cal), Decarka Nath Choudhury v. Shasiskınkar Bannersee.
 - (1980) A I R 1930 Bom 833 (335) 127 Ind Cas 204, Babaja Daso v. Jataja Yeshuant (Person even after adoption treated as, and openly exercising rights as member of joint family of his birth, can acquire title to joint possession by adverse possession)
 - (1923) A I R 1923 Nag 65 (66) 74 Ind Cas 51, Mt Munga v Lachmuprasad
 - [See however (1938) A I R 1938 Cal 117 (119) 176 Ind Cas 706, Berojullah Sarkar v Ayafullah Akand. (Mere fact that A is in toint possession with Bol latter's property does not show that A's joint possession is adverse to B)]
- 5. Claim as mortgages .
 - (1912) 16 Ind Cas 420 (421) (Mad), Eangacharlu Chettur v Muthularnappan Kothan.
 - (1921) A I R 1921 All 262 (264) 43 All 127 55 Ind (as 633 Abdulla v. Shams al-Haq
 - (1932) A 1 R 1932 All 53 (55) 186 Ind Cas 63, Lander Par v Januaryal
 - (1932) A 1 R 1932 All 993 (897) 54 All 625 140 1rd Cas 633, Sulah Lai v. Lateh Mahomed
 - (1889) 1889 Pun Re No 181 Pitu v Dets Dias
 - (1924) A 1 R 1924 Ved 292 (294 295 296: 47 Vad 203 79 Ind Cas 510, Appamma v Chinnatadu (1917) A I R 1917 Oudh 116 (117) 20 Oudh (as 20- 41 1rd (as 562.
 - Bihari v Adva Nath (1918) 19 Ind Cas 841 (892) 87 Rem 5-0 Talublire Sett ement Officer t.
 - Lithards. (1918) 20 Ind Cas 40 (409) (46) Lam Strug v tranga Sahar.
 - (1900) 123 1nd Cas 195 (190) (Mad) Attach Phina : Arpanna I hina

Arts. 142 & 144 cited below, to the High Court of Patna expressed a doubt whether a tenancy or a mortgage right which are creatures of contract can be at all acquired by adverse possession. This view is against the

Claim as under-proprietor :

(1901) 4 Oudh Cas 207 (209), Harnandan v. Bhup Indar Bilhram Singh. (1917) A I R 1917 Ondh 28 (29) : 42 Ind Cas 196, Nageshwar Datt Ram v.

Chedda Singh.

(1920) A I R 1920 Oudh 7 (8): 56 Ind Cas 759, Nadir Singh v. Mt. Angurna Kunwar.

(1929) A I R 1929 Ondh 493 (433, 494) : 5 Luck 880 : 122 Ind Cas 332, Sat Naram Masir v. Deputy Commissioner Ajodhia Estate.

Claim as ex-prebrietary tenent s

(1914) A I R 1914 All 64 (65) ; 22 Ind Cas 269, Ulfat Rai v. Basdeo.

(1916) 33 Ind Cas 483 (484) (All), Ram Dhart Stuck v. Jugul Stuck. (1914) A I R 1914 AN 317 (918); 37 All 22; 26 Ind Cas 21, Baldeo v. Ulfat

Rai. (Exproprietary tenancy cannot be acquired by adverse possession.) (But see (1929) A I R 1929 All 498 (498) : 117 Ind Cas 620 : 51 All

760. Paras Ram Singh v. Ras Kumar Singh.1

Other cases of claim to limited interest s

(1927) A I R 1927 Nag 67 (68) : 22 Nag L R 181 : 98 Ind Cas 540. Channy v. Subhets.

(1934) A I R 1934 All 868 (870): 57 All 166: 149 Ind Cas 797, Shee Raj Chamar v. Mudeer Khan. (Where certain persons buried the dead bodies of their family on the land of another for 80 years, it was held that the former acquired the right by sheer adverse possession.)

(1896) 21 Bom 509 (516,517), Budesab v. Hanmanta. (Partial interest in land may be lost by adverse possession.)

(1903) 5 Bom L R 186 (189), Yamunabas v. Dhonds. (Limited interest found to have been asserted and acquired.)

(1914) A I R 1914 Bom 47 (61): 38 Bom 227: 24 Ind Cas 718, Per Sab Kasım Sab v. Gurappa Basappa. (Life estate.)

(1909) 35 Cal 470 (476, 477) : 7 Cal L Jour 499 . 12 Cal W N C38, Icharam Singh v. Nilmony Bahida.

(1905) 2 Cal L Jour 125 (186), Ishan Chandra Metter v. Raja Ramranian.

man as being mendied in their putil, held that their claim was restricted to limited interest and so their possession was adverse to that extent only.)

(1919) A I R 1919 Cal 782 (788) : 47 Ind Cas 315 (S B), Shib Chandra Roy v. Harendra Chandra Ras.

(1925) A I R 1925 Cal 1189 (1191): 89 Ind Cas 747, Swarnamoys v. Sourin-

dra Nath. (1930) A I R 1930 Cal 339 (341); 126 Ind Cas 259, Satya Prosanna v. Kali Prosanna Das.

(1890) 13 Mad 467 (471), Sankaran v. Periaswami.

(1923) A I R 1923 Mad 153 (159) : 74 Ind Cas 27, Abuvakkar v. Kunhikutti Yals.

(1916) A T R 1916 Oudh 167 (168, 169) : 36 Ind Cas 725, Shambhu Dayal v. Chandra Shekhar. (Acquisition of franchise)

(1925) A 1 R 1925 Pat 739 (740) : 86 Ind Cas 771, Rameshar Singh v. Bit Lal Singh.

(1910) 5 Ind Cas 930 (930) (Mad), Raman Nair v. Pannangath Chandu. (The receipt of rents for more than 12 years as Melcharathdars gives a title by prescription to the holder of the Melcharath.)

(1913) 19 Ind Cas 367 (368) (Cal), Lahurs Bibi v. Bijoy Chand Mahala,

(1929) 115 1nd Cas 141 (143) (All), Rajas v. Behars Lal.

5a (1938) ATR 1938 Pat 479 (490) - 176 Ind Cas 85. Bhulhan Mian v. Radhika Kumars Debs.

generally accepted view, and, it is submitted, cannot be accepted as Arts. 142 & 144 correct.

Notes 95-96

The nature and effect of possession most depend upon the nature and extent of the rights asserted by the conduct or the express declaration of the person in possession.6 The question thus depends upon the animus possidends with which the possession is held by the adverse possessor.7

By virtue of the special provisions of the C. P. Tenancy Act, a tenancy cannot, in the Central Provinces, be acquired by prescrip. tion.8

96. Evidence of adverse possession.-The word "possession" is a legal term and the evidence that would satisfy a Court that a party was in possession would be evidence of acts giving rise to the inference that such party was in possession. It must be remembered that acts sufficient to constitute possession in the owner may not be sufficient to constitute possession in the trespasser.12 Much importance cannot be attached to the evidence of witnesses who come and swear simply that the land was in the possession of somebody or other.1 Acts giving rise to the interence of possession may be proved by oral2 or by documentary evidence. Entries in Revenue Registers to the effect that a party is in possession are evidence that such party was in possession at the date of the entry. Thak maps showing

- 6. (1920) A I R 1920 Oudh 228 (229, 230) . 59 Ind Cas 559, Muhammad Mum. tas Als Khan v. Ugray Singh.
- 7, (1912) 15 Ind Oas 403 (401) (Mad), In re Prattipati Seshayya. (1903) 5 Bom L R 186 (189), Yamunabas v. Dhonds,
 - (1902) 1902 Pun L R No 140, Muhammad Buksh v. Ram Singh. (Adversa possession by a widow against the reversioners commences only when there is an open and unmistakable act to the knowledge of the plaintiff, showing that she wants to hold the property on her account)
 - (1914) A I R 1914 Mid 800 (300) 24 Ind Cas 95, Meethale Mithil Raman v. Puthulat Ambu
 - (1916) A I R 1916 Mad 718 (719) . 39 Mad I . I7 Ind Cas 112, Konda Redda v. Ramasaiems Redds
 - (1925) A I R 1925 Mad 1020 (1020) : 86 Ind Cas 433, Agree Biri Ammal v. Kalandarsa Rowther. (1909) 2 Ind Cas 148 (149) (Cal), Deb Naram Dutt v. Baidya Nath.
 - (1914) A I R 1914 Mad 477 (480) 14 Ind Cas 169 (171) 37 Mad 373, Pattailara Manaklal Kuppen v Chorakkappatta Munde Kottsi.
- (1911) 10 Ind Cas 191 (196) (Mad), Asyanna Charser v. Lakshma Ammal.
- 8. (1919) 17 Ind Cas 606 (608) 8 Nag L R 163. Kanhawalal v Dular Singh. Note 96
- 1a.(1938) A I R 1939 Mad 454 (455) . 178 Ind Cas 301, Atchayuz Patrudu v. Jalaluddın Sakıb
- (1927) A I R 1927 Cal 313 (314) . 100 Ind Cas S23 29 Cm L Jour 313, Loke Nath Roy v Barlal Gans
- 1. (1921) A I R 1921 Pat 284 (236) 57 Ind Cas 744 5 Pat L Jour 632. Gagadhar Prasid Sahu v Mt Dulhin Gulab Kuer. 2 (1868) 9 Suth W R 155 (156). Dinobhundhoo Suhaye v Rajah of Dur-
- bhang sh. 3. (1869) 11 Sath W R 35 (39), Umbria Churn Mundle v Ramibun Moburur. (1922) A I R 1922 Outh 98 (29) 65 Ind Cas 434, Ghulam Sarkar V. Mohammad Ale

Arts. 142 & 144 Nots 96

a party as heing in possession of particular property, are evidence of possession of such property by such party at the time the maps were prepared. The realization of rents of a particular property is evidence that the person realizing them was in possession of such property, though the payment of revenue may or may not he an act of ownership.

An inference of adverse possession can be drawn from circumstances such as long possession and the absence of proof of license or agreement between the owner and the occupier. Where A was in possession of B's land and had constructed residential houses thereon and lived in them without rent, it was held that the possession was prima facie adverse to B.* In Innasimuthu Udayan v. Upakarath Udayan,* the plaintiff had proved his title; the defendant had a possession admitted by the plaintiff, for seven years prior to the suit. The documentary evidence showing that he had heen in possession, for five years immediately preceding those seven years, was similar to the evidence which accompanied his possession during that period.

(1883) 9 Cal 431 (434, 437): 12 Cal L R 12, Saraswati Dan v. Dhanpat Singh.

But they do not by themselves operate to extinguish title of the owner unless adverse possession for the statutory period is established; see: (1928) A I R 1928 Lah 516 (522): 9 Lah 428: 119 Ind Cas 258, Fatch Ali

Shah v. Mahomed Bahsh.

So also a mere entry of land in possession of A in Resenue Records as Government traste does not transfer possession to Government; see:

(1914) 24 Ind Cas 818 (818) : 7 Sind L R 189, Secretary of State v. Mushtah Singh. Nor would an entry showing A to be in possession amount to proof of

such person's title; see: (1878) 10 Bom H C R 187 (189), Faima kom Nubi Saheb v. Darya Saheb.

(1873) 10 Bom H C R 187 (189), Falma Rom Anni Santo V. Darya Santo. (1889) 13 Bom 75 (77), Bhogn v. Bapuji. (See also (1936) A I R 1936 Lab S7 (40): 165 Ind Cas 626. Ghulam

Mahomed v. Samundar. (Person continuing in possession of proprietary rights in spite of adverse entry in revenue papers—No question of limitation arises.))

. 4. (1928) A I R 1928 Pat 558 (560): 72 Ind Cas 648, Chattrapat Pratap Bahadur v. C. G. Lees 1927) A I R 1927 Cal 345 (346): 102 Ind Cas 370, Debendra Nath v. Suren-

dra Nath.

But mere demarcation of land in survey map as in a person's possession is no evidence or is very weak evidence of possession; see:

(1878) 20 Suth W R 285 (285), Ooma Churn v. Umbila Churn.

5 (1923) A I R 1923 Nag 95 (96) : 69 Ind Cas 883, Raghuraj v. Vallabhdas.

(1894) 10 Cal 1112 (1124), Mullick Abdool Guffoor v. Mulcka.

6 (1923) A I R 1923 Nag 95 (96): 69 Ind Cas 883, Raghuraj v. Vallabhdas. (1872) 17 Suth W R 490 (492), Lallee Singh v. Mt. Arit Kooer.

 (1931) A I R 1931 All 923 (325): 130 Ind Cas 296, Alors v. Gajadhar Prasod-8 (1933) A I R 1933 Sind 219 (281): 27 Sind L R 341. 146 Ind Cas 777 (F B). Khanu Chuhar v. Panjal Shah.

(1853) 9 Cal 802 (803) · 12 Cal L R 337, Mohini Mohun v. Kruhno Kuhord. (1936) A I R 1936 Cal 31 (32) : 160 Ind Cas 867, Sm. Amina Bib. v. Akhhoy Kumar. (Where a question of acquisition of title by adverso possession has to be determined, clear, full and definite evidence has to be brought in.)

9. (1699) 23 Mad 10 (12, 15): 26 Ind App 210: 7 Sar 620 (P C).

This evidence consisted of a series of documents such as was usually Arts, 142 & 144 given to and received by the possessor of lands and they extended throughout the period in dispute going back far beyond the twelve years which would operate as a har to the suit. It was held by their Lordships of the Privy Council that the evidence raised the inference that the same possession continued for more than twelve years.

In the case of a claim of adverse possession of a fishery right in a particular part of a river, evidence of acts of possession in parts of the river adjoining the part actually in dispute is admissible provided there is common character of locality between the different parts.10 The mere appropriation of fish from a tank may not necessarily constitute adverse possession of the tank, but acts, such as subletting, mortgaging, re-excavation of the tank, or the expenditure of large sums of money in clearing silt, are acts obviously of proprietary character constituting adverse possession.11

Acts alleged to create adverse possession must be scrutinized in the light of the relationship that exists between the parties who assert against each other the title by adverse possession 1? Thus. acts, during the lifetime of a widow, such as repairs, payment of taxes, etc by the reversioners, cannot be evidence of adverse possession. 13 The mutation in the Revenue Register of a Mahomedan son's name is not an assertion of any hostile title to the step-mother especially where both of them live amicably together 14 In the case of forest and immemorial waste land in Canara, the presumption is that it belongs to Government. In order to rebut this presumption it is not sufficient merely to show such acts as the Government usually permits in forest and waste land for the benefit of the adjoining cultivators, but must consist of acts of undoubted ownership such as the granting of leases to tenants for cultivation and the cutting of valuable timber for sale 15

An unregistered document, in respect of a transaction which had only to be made by a registered document, is not admissible to provo that such transaction is valid, but it may be referred to as explaining the nature and character of the possession thenceforth held by a party to the transaction 16 Thus, where A executed an unregistered 10. (1934) A I R 1934 P C 23 (25, 26) 147 Ind Cas 545 61 Ind App 78 61 Cal 262 (P C), Secretary of State . Debendra Lat Khan (Citing Baren

Parke in Jones v 11 stliams, (1837) 2 M & W 326) (1917) A I R 1917 Cal 644 (646): 35 Ind Cas 60. Bijey Chand Mahatab Bahadur v Isuar Chandra

[See also (1920) A I R 1920 Mad 295 (301) 55 Ind Cas 6e9, Secretary of State . Venlatanarasımka Naulu (The facts, that plaintid alone enjoyed fishers in a portion of the river leasing fishery right. That he controlled over the taking of the sand from the

mer-led, show his possession as owner of the mer ted), 12 (1918) 21 Ind Cis 21 (22) (Vad), Thungarelu Chetty v. Vangathare "Imma" 19, (1918) 21 Ind Cas 21 (22) (Vad), Thungarelu Chettu v. Manyithase Amma. 14 (1934) A I R 1934 Pesh 7 (5: 14" Ind Cas 926 Mr Talut v Interable

15. (1904) 28 Mad 257 (292, 200). 15 Mad L Jeni 147 Secretary of State v Mangethicar Arishnaywa

16. (1919) A IR 1919 P C 44 (47) 43 Mad 244 40 Ibd App 2-5 43 lea cas 201 (P C), Varada Iulan v Jectara branena.

Note 96

Arts. 142 & 144 gift in favour of B, and B entered into possession, their Lordships Notes 96-97 of the Privy Council held that the possession of B became adverse to A from that date.17

See also the undermentioned cases. 18

- 97. Plea of adverse possession. Where A filed a suit for partition against B and for possession of his share on the ground that A and B were both entitled to the property under a particular document of title and that A was in joint enjoyment of the property with B up to a particular period, when he was dispossessed by B, it
 - (1925) A I R 1925 Lah 491 (492) : 6 Lah 819 : 88 Ind Cas 872, Ata Muhammad v. Shankar Das.
 - (1927) A I R 1927 Oudh 581 (582): 103 Ind Cas 662, Maula v. Irshad (1932) A I R 1932 Cal 634 (636): 141 Ind Cas 320, J. C. Galstaun v. Fro-
- fulla Kumar De.
- 17. (1919) A I R 1919 P C 44 (47): 43 Mad 244 · 46 And App 285: 53 Ind Cas 901 (P C) Varada Pallar v I ... area. 18.
 - (The plaintiffs had been in possession for many years, but they had never paid any rent in respect of the land and in the village papers they had been recorded as bila faisla tenants whereas the tenants were recorded as proprietors Held, that the facts were not sufficient to establish a title by adverse possession.)
 - (1883) 1883 All W N 246 (247), Phundo v. Bhishua Das. (A few acts such as granting of leases, execution of mortgage, are not sufficient for creat-
 - ing title by adverse possession.) (1872) 17 Suth W R 195 (1871), Collector of Furreedpore v. Kales Doss Harah, (The evidence of Government, having sent its officers to measure the land and to autround it with pillars is the very best evidence of possession of a lately formed chur.)
 - (1915) A I R 1915 Cal 625 (626) : 30 Ind Cas 914, Kadir Bux v. Birendra Keshore II one massessen her the detenden

or waveres hospersion.) (1927) A I R 1927 Mad 456 (457,458) 101 Ind Cas 96 Secretary of State

... on posite or the tiers heathered on the site should not change the character of possession of the plaintiff.)

(1929) A I R 1929 Oudh 328 (330) : 114 Ind Cas 815, Jagatjit Singh v. Muhammad Asgar Als (If the owner allowed other persons to cross the boundary and occupy an area of 25 acres, and plant thereon a number of trees and forbid the owner's men to enter the land and his possession extends for a period of over 12 years, a fitle will be obtained

was held by their Lordships of the Privy Conneil that on failure of Arts. 142 & 144 the proof of the title alleged, the plaintiff could rely on the plea that he had acquired a right to the property by adverse possession for the requisite period. Their Lordships observed as follows:

"Then comes in Section 28 by which his right to the property is extinguished at the determination of the period limited for hringing a suit for possession of it. The point does not require to be expressly pleaded, as it is only evidence of the respondent's title."1

The High Court of Allahahad has interpreted this decision as having held that when a person sues on the ground of title, he can, without more, show that he got the title hy adverse possession.2 This view has not been accepted in the generality of cases In Somasundaram Chetty v. Vadivelu Pillai,3 it was held by the High Court of Madras, following a decision of the High Court of Calcutta in Shiro Kumari Debi v. Gobind Shaw Tanti, that a plaintiff who came to Court alleging title, without more, cannot be allowed to succeed on the hasis of title by adverse possession. In Nepen Bala Debr v. Siti Kanta Banery: 42 their Lordships of the Calcutta High Court observed as follows

"Where no case of acquisition of title by adverse possession is made in the plaint nor is the question raised directly or indirectly in any of the issues, the plaintiff ought not to be

(1928) A I R 1923 All 505 (565) . 74 Ind Cas 879, Ragha Mal v. Abdus Sattar. (Kabuliats and application to the municipality may not be sufficient to prove prosession but prima facte counterparty may not or sufficient to prove prosession but prima facte counterpart of leases executed by tenants and applications for permission to build put in the Municipal Doard are the best possible exidence of possession) (1918) A I R 1915 Mad 145 (149) 26 Ind Cas 537, Gobinda Dars Venhata

Perumal (Strong evidence is necessary to rebut adverse possession of auction-purchaser put in complete practicable possession)
(1881) 7 Cal L R 269 (270, 271), Kussessur Roy v Joggodishury (The fact

that certain land in village being measured by the revenue authorities as appurtenant to a certain estate is prima facte evidence of possession of the land at the time of the survey by the owner of such estate (1921) A I R 1921 Cal. 754 (758) G I I of Cas 469, Monmbha Nath v. Anath Bundhu. (The first that certain lands were entered in a road

cess teturn filed by a person in respect of lands held by him under the Zamindar is prima facis evidence that they were not held adversely to the Zamindar, and the presumption cannot be got over unless it is

Note 97

(1900) 24 Mad 857 (896) 29 Ind App 81 S Rom L R 803 , 5 Cal W N 545 : 7 S it 819 (P C), Khadanga v Mahapatrulu.

2. (1931) A I R 1931 All 670 (672) . 133 Ind Cas 26, Municipal Board, Etiwah v. Mt Ram Srs

3, (1908) 81 Mad 531 (532) 4 Mad L Tim 544

See also the following case to a similar effec - (1809) 11 Suth W R 550 (551 552), Hura Scondaret Debit v Unnopoema Del sa

4a (1910) S Ind Cas 41 (43, 44) (Cal).

Note 97

rts, 142 & 144 Notes 96 – 97

gift in favour of B, and B entered into possession, their Lordships of the Privy Conneil held that the possession of B hecame adverse to A from that date.¹⁷

See also the undermentioned cases. 18

97. Plea of adverse possession. — Where A filed a suit for partition against B and for possession of his share on the ground that A and B were both entitled to the property under a particular document of title and that A was in joint enjoyment of the property with B up to a particular period, when he was dispossessed by B, it

- (1925) A I R 1925 Lah 491 (492): 6 Lah 319: 88 Ind Cas 872, Ata Muhammad v. Shankar Das.
- (1927) A I R 1927 Oudh 581 (582): 103 Ind Cas 662, Maula v. Irshad
- (1932) A I R 1932 Cal 634 (636): 141 Ind Cas 320, J. C. Galslaun v. Frofulla Kumar De.
- 17. (1919) A I R 1919 P C 44 (47): 48 Mad 244: 46 Ind App 285: 53 Ind Cas 901 (P C), Varada Fillas v. Jeetarathnammal.
- (1931) A I R 1931 Sand 1 (2): 25 Sand L R 257: 130 Ind Cas 548, Jamiatrat
 Manyanol v. Goumal. (Mere user cannot be taken as definite assertion
 of proprietary rights and does not constitute adverse possession
 - (1931) A TR 1931 Oudh 144 (144): 181 Ind Cas 400, Dabu v. Thakur Deen. The plaintiffs had been nn possession for many years, but they had never paid any rent in respect of the land and in the village papers they had been recorded as tola failad tenants whereas the tenants were recorded as proprietors. Held, that the facts were not sufficient to establish a title by adverse possession.
 - (1883) 1883 All W N 246 (247), Phundo v. Bhishua Das. (A few acts such as granting of leases, execution of mortgage, are not sufficient for creating fittle by adverse possession.)
 - [1879] T Suth W R 195 (1971), Collector of Furretdpore v. Kalee Doss Harrah. (The evidence of Government having sent its officers to measure the land and to surround it with pillars is the very best evidence of possession of a lately formed chur.)
 - (1915) A IR 7915 Cal 628 (2021) 30 Ind Cas 914, Kadur Duwv, Birmdra Kahori. (Long possession by the detendant on his own tabull far to the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the co
 - (1927) A I R. 1927 blad 456 (457,458); 101 Ind Cas 06, Secretary of State v. Multituburara Pullar, (The erection and open use of a pucces thatched building on a site forming part of nathen syrambols for a period of over 60 years used by the plannil and co-parcent for the purpose of telhering cattle and storing hay etc., and the fact of the enclosure of the site by a fall fence all round, constitute adverse possession as against Government and the fact that the Government levied assessment on some of the trees scattered on the sate should not change the character of possession of the plannil?
 - (1929) A. T. S. 1929 Oodh 292 (1830). 111 Ind Cas 815, Japatiti Sunjh v. M. Mahammad Angar Ath, Iff the owner allowed other persons toras the boundary and occupy an area of 25 acres, and plant thereon a number of trees and tortad the owner's men to enter the land and his possession extends for a period of over 12 years, a title will be obtained by adverse possession.

..... . T

was beld by their Lordships of the Privy Council that on failure of Arts, 142 & 144 the proof of the title alleged, the plaintiff could rely on the plea that be bad acquired a right to the property by adverse possession for the requisite period. Their Lordships observed as follows:

Note 97

"Then comes in Section 28 by which his right to the property is extinguished at the determination of the period limited for bringing a suit for possession of it. The noint does not require to be expressly pleaded, as it is only evidence of the respondent's title."1

The High Court of Allahabad has interpreted this decision as having held that when a person sues on the ground of title, he can, without more, show that he got the title by adverse possession.2 This view has not been accepted in the generality of cases. In Somasundaram Chetty v. Vadivelu Pillar,3 1t was beld by the High Court of Madras, following a decision of the High Court of Calcutta in Shiro Kumarı Debi v. Gobind Shaw Tantı,4 that a plaintiff who came to Court alleging title, without more, cannot be allowed to succeed on the basis of title by adverse possession. In Nepen Bala Debt v. Siti Kanta Banerji, their Lordships of the Calcutta High Court observed as follows.

"Where no case of acquisition of title by adverse possession is made in the plaint nor is the question raised directly or indirectly in any of the issues, the plaintiff ought not to be

(1928) A I R 1923 All 565 (565) . 74 Ind Cas 879, Ragha Mal v Abdus Sattar. (Kabuliats and application to the municipality may not be sufficient to prove possession but prima facie counter-purt of leases executed by tenants and applications for permission to build put in the Municipal Board are the best possible evidence of possession) (1915) A IR 1916 Mad 145 (149) 26 Ind Cas 537, Gobinda Das v Venhata

Perumal (Strong evidence is necessary to rebut adverse possession of

auction-purchaser put in complete practicable possession)
(1881) T Call E R 200 (270, 271), Kussessiur Roy v. Jogodishury (The fact that certain land in village being measured by the revenue authorities

as appurtenant to a certain estate is prima facte endence of possession of the land at the time of the survey by the owner of such estate) (1921) A I R 1921 Cal 783 (788) 6 I Ind Cas 469, Mosmolia Nath v. Anath Bundhu (The fact that certain lands were entered in a road cess return filed by a person in respect of lands held by him under the Zamindar is prima face evidence that they were not held adversely

Note 97

(1900) 24 Mad 837 (396) 28 Ind App S1: S Rom L R 303. 5 Cal W N 545: 7 Sar 819 (P C), Khadanga v Mahapatrulu.

2. (1931) A I R 1931 All 670 (672) 133 Ind Cas 26, Municipal Loard, Firmah v Mt Ram Sri.

8. (1908) 31 Mad 531 (532) 4 Mad L Tim 314.

4. (1877) 2 Cal 418.

See also the following case to a similar effect - (1509) 11 Suth W R 550 (551, 552), Huro Soon luree Debit v. Unnopoerna Debia.

4a (1910) 8 Ind Cas 41 (43, 44) (Cal).

Arts. 142 & 144 Note 97

allowed to succeed upon such a case. On the other hand, as pointed out by this Court in the case of Lilabati Misrain v. Bishur Choben.4b when the question reduces itself to one of law upon facts admitted or proved heyond controversy, it is not only competent to the Court but expedient in the interests of justice to entertain the plea of adverse possession, if such a case arises on the facts stated in the plaint and the defendant is not taken by surprise. The true test, therefore, to be applied to determine whether the plea of title by adverse possession should be allowed to be urged, though not explicitly raised in the plaint, is, how far the defendant is likely to be prejudiced if the point is permitted to be taken."

The same view has been taken in a number of other cases. A person may therefore succeed on a title hy adverse possession pleaded for the first time in the Court of Appeal, if such a case arises on the facts stated in the plaint and the defendant is not taken by surprise.6 Where, however, the plaintiff has not based his title on adverse possession, nor is the question raised in the issues, nor any evidence let in, it cannot be pleaded for the first time in first appeal,7 or in second appeal.8

4b.(1907) 6 Cal L Jour 621 (635).

- 5. (1919) A I R 1919 Cal 339 (340) . 33 Ind Cas 639, Bata Krista Pramanick v. Jogendra Nath Matty. (Whether plaintiff can succeed on such plea depends mainly on whether defendant is or is not taken by surprise and also on the facts of each case)
 - (1917) A I R 1917 Cal 469 (475, 478): 36 Ind Cas 890, Ramchandra Sil v.
 - (1917) A.T.R. 1917 Col. 469 (410, 419); 35 Ind Cas SOV, isamenanara Dar V. Ramaman, Dan (Do)
 (1933) A.T.R. 1933 Lab. 25 (26); 13 Lab. 677; 140 Ind Cas 604, Shromani Gurdwaro Parabandhal Committee v. Prem Das (The question of adverse possession is a mixed question of this and fact; and it a party claims title by adverse possession it is his duty to make clara allegations in the plaint and to lead evidence as regards facts from which he in the Case 16 August and informate of his allyters possession. asks the Court to draw an inference of his adverse possession.)
 - (1925) A I R 1925 Mad 1005 (1010) . 88 Ind Cas 249, Rangappa Nayakar v. Rangasamy Nayakar. (Adverse possession should be expressly pleaded in plaint or at least as an alternative ground.)
 - (1929) 117 Ind Cas 318 (319) (Pat), Alimuddin v. Salim. (A declaration of title by adverse possession cannot be given on a title not distinctly atated in the plaint or in the issues,)
 - (1906) 3 Cal L Jour 316 (330, 331), Ananda Hars Basak v. Secretary of State. (Where adverse possession is not pleaded in the plaint, the plaintiff cannot succeed on the ground of adverse possession.)
 - (1881) 7 Cal 500 (563), Krishna Churn v. Protab Chunder.
- 6. (1926) A 1 R 1926 Pat 192 (194) : 5 Pat 441 : 92 Ind Cas 177, Mt. Balisa Kuer v. Raza Ram Pandeu.
- 7. (1927) A I R 1927 Lab 522 (524) . 102 Ind Cas 476, Maulu v. Belt Ram. (1874) 22 Suth W R 216 (219), Protab Chunder v. Collector of Gowalparah. (1924) A I R 1924 Lab 468 (469) : 60 Ind Cas 321, Wanr Chand v. Nathu
 - Ram. 8. (1909) 3 Ind Cas 711 (712) · 5 Law Bur Rul 82. Po . Wya v. . Va Le.

A defendant who sets up a title and also pleads limitation, may Arts. 152 & 155 succeed on limitation even if he is nuable to prove his title.9

Notes 97-98

Where the plaintiff pleads that the defendant is in possession as his licensee, but the defendant denies it and sets up adverse possession, he cannot subsequently rely upon the license or its revocation but must fail if he is unable to establish adverse possession 10

98. Onestion of adverse possession, if one of law or fact. -Possession is a question of fact,1 and the extent of the possession may also be a question of fact.2 So also is the question whether a person has been dispossessed of certain property,24 In Secretary of State v. Subramania Therar,3 it was observed by their Lordships of the Privy Council as follows:

"The question whether there has been a persistent claim of right to a tract of land is, their Lordships need hardly say, a question of fact. Such assertion being proved, all questions as

(1929) 115 Ind Cas 680 (681) (Pat), Mahomed Sayed Khan v. Abdul Gafoor, (1926) A I R 1926 Bom 40 (42) 49 Bom 817 91 Ind Cas 349, Rachappa Chanbasappa v Ningappa Kasappa

(1934) A 1 R 1934 All 692 (693) 151 Ind Cas 355, Peare Lal v. Nath: Singl

(1935) A I R 1935 Oudh 387 (392) 155 Ind Cas 23, Mt. Rajana v. Musaheb

(1909) 4 Ind Cas 1167 (1167) (Mad), Appayu Managaran v. Muthusaumy

(1924) A I R 1924 Cal 245 (248) . 81 Ind Cas 29, And Kumar v. Rash Mohan. (1933) A I B 1933 Bom 26 (33) · 141 Ind Cas 103, Narayan Balwant v. Dattatraya Ramcandra (Plea of adverse possession, cannot be taken for first time in second appeal especially when facts on record are insufficient.)

(1917) A I R 1917 Cal 817 (817) . 37 Ind Cas 942, Preyanath Matter v. Anath Nath Dev.

(Sec (1922) A I R 1922 Pat 398 (399) 69 Ind Cas 185 1 Pat 23, Khub Lal Upadhya v. Jugdish Prasad Singh.) (See also (1928) A I R 1923 Lah 259 (259) 78 Ind Cis 817, Deol. Ram

v. Duls Chand.] 9. (1883) 7 Bom 96 (99), Maidin Saiba . Nagopa (Defendant can plend both tenancy and adverse possession) (1868) 9 Suth W R 131 (132), Nobolishore Dey v. Pamkrishen Mohurir.

(1903) 7 Cal W N 294 (296), Keamudds . Hara Mohan Mondul.

10. (1919) A I R 1919 All 403 (404) 52 Ind Cas 366 41 All 669, Jan Chand v. Girnar Singh.

Note 98

 (1931) A 1 R 1931 P C 186 (188) 190 Ind Cas 315 10 Pat 407 55 Ind App 29 (P C), Nageshwar Buz Roy v Bengal Coal Co

(1931) A I R 1931 All 823 (924) 130 Ind Cas 296, Alops . Gajadhar.

(1921) A 1 R 1921 Lah 264 (265), Mahomad Ann Khan . Sultan Ahmad. (1922) A I R 1922 Pat 398 (399) 60 Ind Cas 155 1 Pat 23 Ahub Lal v.

Jugdish Prasid. (1923) A I R 1923 All 382 (382) 75 Ind Cas 672, Bisheshar Nath v Abdul

Wahid (1897) 21 Bom 91 (96), Rajaram v Ganesh Hars

(1932) 1nd Rul 1932 1ah 628 (629), Lai Chand Khasha than Yar

(1933) A I R 1933 Lah 721 (722) 14 Lah 302 195 Ind cas 6-0 ((1) Kaliu Mal v Maman. 2 (1931) A I R 1931 P C 1-6 (1-4) 1 to lad Cas 415 10 Par 407 5- 1-1 App

29 (P C), Nageshwar bur Pop v beneat alt. 21 (1937) 4 1 R 1937 Lab 656 (65c) Res Ind cas 65 Deration Large Ekan, 3. (1891) 15 Mad 101 (109) 18 Ind top 14 1 15 1, i Jar 74 6 521 74 (1°C).

Arts. 142 & 144 Nots 98

to the amount of use and enjoyment of the tract hy the claimants and as to the sufficiency of such use and enjoyment to constitute possession of the whole extent claimed, are also, in the opinion of their Lordships, pure questions of fact."

The question whether possession is adverse or not is sometimes one of simple fact, but may be a question of law or a mixed question of law and fact. Whether a person set up adverse claim is a question of fact, but whether on the facts found an inference can be fairly drawn that such possession is adverse, is one of law.

- 4. (1868) 9 Suth W R 79 (80), Ishan Chunder v. Ram Lochun.
 - (1918) A I R 1918 Nag I7I (173) : 47 Ind Cas 892, Praihad Singh v. Abdul
 - Aziz Khan. (1891) 19 Ind App 48 (56): 19 Cal 253: 6 Sar 133 (P C). Lachmeswar Singh
 - v. Manowar Hossetn. (1909) 4 Ind Cas 214 (214). 33 Bom 712, Ganapati Ambadas v. Raghunath Anant. (The question whether possession is adverse or not is sometimes one of simple fact hat it may be a question of law, or a mixed
 - question of law and fact.) (1931) A I R 1931 All 823 (324): 180 Ind Cas 296, Alops v. Gajadhar.
 - (1922) A I R 1922 Cal 54 (55): 63 Ind Cas 200, Jogendra Nath v. Rajendra
 - (1927) A I R 1927 Cal 30 (31): 97 Ind Cas 635, Abdul Gafur v. Abdul Jabbar.
 - (1929) A I R 1929 Oudh 837 (333, 339) . 115 Ind Cas 440, Bashir Ahmad v.
 - Parshotam. (1936) A I R 1938 Lah 741 (742): 166 Ind Cas 607, Mt Bhans v. Ujagar
 - Singh.
 - (1923) A I R 1928 All 291 (291) : 71 Ind Cas 640, Hafts Abdullah v. Alls,
 - (1918) A I R 1918 Cal 68 (70) : 51 Ind Cas 123, Chintamani Pramanik v. Hriday Nath
 - (1932) A I R 1932 All 393 (896) : 54 All 628 : 140 Ind Cas 853, Subah Lal v. Fatch Mohamad.
 - (1911) 11 Ind Cas 185 (166) (Cal), Shookoor Mallich v. Behars Lal.
 - (1933) A I R 1933 Lah 25 (26) . 13 Lah 677 : 140 Ind Cas 604, Shiromani Gurdwara Prabandhak Committee v. Prem Das.
 - (1895) 21 Bom 91 (96), Rajaram v. Ganesh Hari.
 - (1935) A I R 1935 Oudh 387 (392) : 155 Ind Cas 23, Mt. Rajana v. Musaheb
 - Als. (1917) A I R 1917 Cal 817 (617) : 87 Ind Cas 942, Priyanath Metter v.
 - Anath Nath Dev. (1921) 60 Ind Cas 293 (301) (Cal), Balaram Guria v. Syama Charan Mondal,
 - (1937) A I R 1937 All 429 (431) : 169 Ind Cas 962, Ram Chandra v. Asa
 - (1924) A I R 1924 Ondh 266 (270) · 27 Oudh Cas 77 : 78 Ind Cas 895, Indarpal Singh v. Thalur Din Singh.
 - (1935) A I R 1935 Cal 760 (760) : I59 Ind Cas 752, Bhabani Prosanna v. Manndra Chandra.
- (1933) A I R 1933 Ondh 462 (462, 463): 146 Ind Cas 937, Ram Shankar v. Sheo Dutt.
 - (1933) A 1 R 1933 Lah 721 (722) : 14 Lah 302 : 135 Iad Cas 680, Kallu Mal v. Maman.
- 6. (1929) A 1 R 4929 Pat 590 (591): 117 Ind Cas 614, Jogeyanand v. Girja Nand.
 - (1926) A 1 R 1926 Lah 482 (482) : 98 Ind Cas 161, Hahim Ali v. Kartar Singh.
 - (1911) 11 Ind Cas 185 (186) (Cal), Shooloor Mallik v. Rehari Lal. (1921) CO Ind Cas 293 (301) · 24 Cal W N 1057 (1063), Balaram Guria v.
 - Shiama Charan. (1934) A I R 1934 All 253 (290) : 149 Ind Cas 607, Subhadra Kuar v. Ram Setak.

99. Adverse possession by or against Crown. - Where the Arts. 142 & 144 question is one of adverse possession against the Crown, Articles 142 and 144 must be read with Article 149, infra.1 And so reading them, it is clear that no adverse possession can be effectively pleaded against the Crown for a period of less than aixty years,2

It was beld by the Privy Council in Secretary of State v. Debendra Lal,3 that there was no difference as regards the requisites of adverse possession between adverse possession against the Crown and adverse possession against a private person except that, in the former case, a much longer period of adverse possession is necessary in order to acquire title. Their Lordships of the Privy Council observed:

"The Limitation Act is indulgent to the Crown in one respect only, namely in requiring a much longer period of adverse possession than in the case of a subject; otherwise there is no discrimination between the Crown and the subject as regards the requisites of adverse possession "

The Crown in that case was the owner of a right of fishery of which it could only be in possession by granting to others leases and licenses to fish. The granting by a person other than the Crown, of leases and licenses to fish, was held to be evidence of usurpation of the distinctive rights of the Grown and was held to be the most significant evidence of adverso possession.

Where a person claims title by adverse possession against the Government, the burden is on him to prove such possession for the full period of sixty years. Proof of advorse possession for a shorter period will not shift the onus to the Government to show that the possession has not continued for the full period of sixty years *

(1924) A I R 1924 Oudh 266 (270) 27 Oudh Cas 77 : 78 Ind Cas 895, Indar-

ral Singh v. Thabur Din Singh (1926) A I R 1926 Nag 129 (190) E9 Ind Cas 663, Teshwant v Daulat.

(1938) A I R 1938 Sind 132 (188) . 176 Ind Cas 549, Tahelram Tackchand v.

Mt Myral (1937) A I R 1937 All 429 (431) 169 L C. 962, Ram Chandra v. Ass Ram. (1920) A I R 1920 Lah 293 (224) 54 Ind Cas 673 . 1919 Pun Re No. 170,

Md Umar Khan v Rass Khan (1938) A I R 1938 Cal 117 (118) 176 Ind Cas 706, Berojullah Sarkar v. Ayatullah Akand

(1931) A I R 1931 Oudh 38I (382) 132 Ind Cas 772, Sheoraj Narain v. Jagannath Prasad

(1917) A I R 1917 All 42 (42) 40 Ind Cas 420, Champa Lal v. Mangal Chand.

Note 99

(1916) A I R 1916 P C 21 (27) 39 Mad 617 43 Ind App 192 35 Ind Cas 902 (P C), Secretary of State v. Chellikans Rama Bao.

2 (1916) A I R 1916 P C 21 (27) 39 Mad 617 43 Ind App 192 35 Ind Cas 902 (P C) Secretary of State v Chellelane Earsa Eas (1925) A 1 R 1925 Vind 780 (785) 48 Vind 570 91 Ind Cas 180 Eristra

Sartra v Singaratelu 8. (1984) A I R 1934 P C 23 (25) 61 Cal 202 61 Ind App to 147 Ind Cas 545 (P C)

4. See Note 9 to Article 149, ante.

See also the cross cited in Feet-Note 4 to Note 9 to 1rt 119, 18/12.

Arts, 142 & 144 Note 98

to the amount of use and enjoyment of the tract by the claimants and as to the sufficiency of such use and enjoyment to constitute possession of the whole extent claimed, are also, in the opinion of their Lordships, pure questions of fact."

The question whether possession is adverse or not is sometimes one of simple fact, but may be a question of law or a mixed question of law and fact. Whether a person set up adverse claim is a question of fact, but whether on the facts found an inference can be fairly drawn that such possession is adverse, is one of law.

- 4. (1868) 9 Suth W R 79 (80), Ishan Chunder v. Ram Lochun.
 - (1916) A I R 1916 Nag 171 (178) : 47 Ind Cas 892, Prathad Singh v. Abdul Aziz Khan.
 - (1891) 19 Ind App 48 (56) · 19 Cal 253 : 6 Sar 133 (P C), Lachmeswar Singh
 - (1900) 4 Ind Cas 214 (214), 93 Bom 712, Ganapati Ambadas v. Eaghunath Anart. (The question whether possession is adverse or not is sometimes one of simple fact but it may be a question of law, or a mixed question of thw and fact.)
 - (1931) A I R 1931 All 323 (924) : 130 Ind Cas 296, Alops v. Gajadhar.
 - (1922) A I R 1922 Cal 54 (55): 63 Ind Cas 200, Jogendra Nath v. Rajendra Nath.
 - (1927) A I R 1927 Cal 80 (81): 97 Ind Cas 685, Abdul Gafur v. Abdul
 - Jabbar. (1929) A I R 1929 Oudh 337 (338, 339): 115 Ind Cas 440, Bashir Ahmad v.
 - Parshotam (1936) A I R 1936 Lah 741 (742) 166 Ind Cas 607, Mt. Bhans v. Ujagar
 - Singh. (1923) A I R 1929 All 291 (291): 71 Ind Cas 640, Hafis Abdullah v. Alli.
 - (1923) A I R 1925 All 291 (291): 71 Ind Cas 510, Hafts Abduttan V. Alli. (1918) A I R 1918 Cal 69 (70): 51 Ind Cas 123, Chiniamans Pramansk V.
 - Hriday Nath. (1932) A I R 1932 All 993 (396) : 54 All 629 : 140 Ind Cas 659, Subah Lal v.
 - Fateh Mohamad
 - (1911) 11 Ind Cas 185 (186) (Cal), Shookoor Mallich v. Behari Lai. (1993) A I R 1933 Lah 25 (26): 13 Lah 677: 140 Ind Cas 604, Shiromani
 - Gurdicara Prabandhak Committee v. Prem Das. (1895) 21 Bom 91 (96), Rajaram v. Ganesh Hari.
 - (1935) A I R 1935 Oudh 987 (392) : 155 Ind Cas 23, Mt. Rajana v. Musaheb
 - (1917) A I R 1917 Cal 817 (817): 37 Ind Cas 942, Priyanath Miller v. Anath Nath Dev.
 - (1921) 60 1nd Cas 293 (301) (Cal), Balaram Gursa v. Syama Charan Mondal.
 - (1937) A I R 1937 AH 429 (431): 169 Ind Cas 962, Ram Chandra v. Asa Ram. (1924) A I R 1924 Ondh 266 (270): 27 Oudh Cas 77: 78 Ind Cas 895, Indar-
 - pal Singh v. Thahur Din Singh. (1935) A I R 1935 Calv760 (760): 159 Ind Cas 752, Bhabani Prosanna v.
- Manuatra Chandra.
 5. (1933) A I R 1933 Oudh 462 (462, 463) : 146 Ind Cas 987, Ram Shankar v.
- Sheo Duit. (1933) A I R 1933 Lah 721 (722) : 14 Lah 302 : 135 Ind Cas 680, Kallu Mal
- v. Maman. 6. (1929) A 1 R 1929 Pat 590 (591): 117 Ind Cas 644, Jogeyanand v. Girja Nand.
 - Nand. (1926) A 1 R 1926 Lah 492 (482): 93 Ind Cas 161, Hahim Ali v. Karlar Singh.
 - (1911) 11 1nd Cas 185 (166) (Cal), Shookoor Mallik v. Behart Lal.
 - (1921) CO Ind Cas 298 (301). 24 Cal W N 1057 (1063), Balaram Guria v. Shiama Charan.
 - 1934) A I R 1934 All 289 (290) : 149 Ind Cas 807, Subhadra Kuar v. Pam Sewak.

Note 99

99. Adverse possession by or against Crown. - Where the Arts. 142 & 17 question is one of adverse possession against the Crown, Articles 142 and 144 must be read with Article 149, anfra 1 And so reading them, it is clear that no adverse possession can be effectively pleaded against the Crown for a period of less than sixty years 2

It was held by the Privy Council in Secretary of State v. Debendra Lal,3 that there was no difference as regards the requisites of adverse possession between adverse possession against the Crown and adverse possession against a private person except that, in the former case, a much longer period of adverse possession is necessary in order to acquire title. Their Lordships of the Privy Council observed:

"The Limitation Act is indulgent to the Crown in one respect only, namely in requiring a much longer period of adverse possession than in the case of a subject, otherwise there is no discrimination between the Crown and the subject as regards the requisites of adverse possession "

The Crown in that case was the owner of a right of fishery of which it could only be in possession by granting to others leases and licenses to fish. The granting hy a person other than the Crown, of leases and licenses to fish, was held to be evidence of usurnation of the distinctive rights of the Crown and was held to be the most significant evidence of adverse possession.

Where a person claims title by adverse possession against the Government, the burden is on him to prove such possession for the full period of sixty years. Proof of adverse possession for a shorter period will not shift the onus to the Government to show that the possession has not continued for the full period of sixty years,

(1924) A I R 1924 Oudh 266 (270) 27 Oudh Cas 77 78 Ind Cas 895, Indarpal Singh v Thalur Din Singh (1926) A I R 1926 Nag 129 (130) 89 Ind Cas 663, Yeshuani v Daulat.

(1938) A I R 1938 Sind 192 (138) 176 Ind Cas 519, Tahilram Tackehand v. Mt Mural

(1937) A I R 1937 All 429 (431) 169 L. C. 962, Ram Chandra v Asa Ram. nd Cas 873 1919 Pun Re No 170.

Ind Cas 706, Berojullah Sarkar v.

Аудицан Алапа (1931) A I R 1931 Oudh 381 (392) 182 Ind Cas 772, Sheoraj Narain v. Jagannath Prasad

(1917) A I R 1917 All 42 (42) 40 Ind Cas 420, Champa Lal v. Mangal Chand.

Note 99

1 (1916) A I R 1916 P C 21 (27) 39 Mrd 617 43 Ind App 192 902 (P C), Secretary of State v. Chellikani Rama Rico

(1916) A I R 1916 P C 21 (27) 39 Vad 617 43 Ind 4pp 192 35 Ind Cas 902 (P C), Secretary of State v Chelistam Parea Ear (1925) A I R 1925 Mad 780 (785) 45 Mad 570 91 Ind Cas 130 Errelina

Sastri v Singaratelu 8 (1934) A I R 1934 P C 23 (25) 61 Cal 262 61 Ind Apr 78 147 Ind Cas 545 (P C)

4. See Note 9 to Article 149, ante.

See also the cases cited in Foct-Note 4 to Note 9 to Art. 149, anfra.

Arts. 142 & 144 Notes 99-100

The Crown can, like any other party, acquire title by adverse possession for twelve vears.5

99a. Adverse possession by or against the public. - The freehold of all soil not shown to be vested in any individual or corporation is in the Crown.1 The public may have rights of user over it as in the case of highways and waterways, but this does not make the public the owner of the property. The public cannot acquire by prescription any land as against the person entitled to it. It can acquire, if at all, a right of user, by grant or dedication which may be express or implied from user.2 The reason is that the public as such cannot have the particular animus possidendi necessary to constitute adverse possession. A contrary view, namely that the Muhammadan community can acquire a title by prescription, has been assumed in the undermentioned case. It is submitted that this is not correct.

It follows that there can be no acquisition of title by prescription against the public, since the public as such cannot he the owner of any property. But the public may lose its rights of user over property where a person has been in adverse possession thereof against the person in whom the ownership is vested for the statutory neriod. Where a person had made an encroachment upon property vested in a municipality, and was in adverse possession thereof for the statutory period, it was held that right of the minicipality was extinguished, and that the right of the public incidental to its right of way also became extinguished.

100. Special or local law .- Where any special or local law prescribes for any suit for the possession of immovable property a period of limitation different from the period prescribed therefor by the Limitation Act, the period prescribed by the special or local law will apply to the suit and not the period prescribed by the Limitation Act. (See Notes under Section 29, sunra.)

[[]See also (1916) A I R 1916 P C 21 (27) 39 Mad 617 . 43 Ind App 192. 35 Ind Cas 902 (P C), Secretary of State v. Chellikani

Rama Rao.) 5. (1899) 3 Cal W N 99 (106), Kristo Moni Gupta v. Secretary of State.

Note 99a

^{1. (1904) 27} Mad 386 (393) . 14 Mad L Jour 37, Madathami Ramaina v. Secretary of State. (Per Bhashyam Ayyangar J.) See also Section 2 of Madras Land Encroachment Act, III of 1905, which is

hased on the said principle 2. (1923) A I R 1923 Mad 624 (625) · 74 Ind Cas 25 . 47 Mad 116, Ussam

Kasım Sait v Secretary of State,

⁽¹⁹³⁶⁾ A I R 1936 Oudh 207 (203) 165 Ind Cas 101, Ramzan v. Md. Ahmad Khan (User will establish dedication)

^{8, (1890) 1890} Bom P J 276, Fatu v. Ramchandra.

 ⁽¹⁹¹⁶⁾ A I R 1916 Mad 613 (614) 17 Ind Cas 158; 39 Mad 6, Risareswara-swarm v. Bellary Municipal Council.

^{(1901) 25} Mad 635 (650) 12 Mad L Jour 37, Sundaram Ayyar v. Municipal Council, Madura.

143.* Like suit, Twelve years. When the for-when the plaintiff has become entitled by reason of any forfeiture or breach of condition.

curred or the condition is broken.

Article 143

Synopsis

- 1. Legislative changes.
- 2. Scope of the Article.
- 3. Forfelture and breach of condition, dietinguished.
- 4. Forfeiture of tenancy General.
 - 5. Forfeiture of tenancy for breach of condition of alienation - Suit against alience,
 - 6. Forfeiture of tenancy by denial of landlord's title.
- 7. Forfeiture in cases other than tenancy.
 - 8. Forfelture on remarriage of Hindu widow.
 - 9. Forfeiture on unchastity of Hindu widow,
 - 10. Other instances of forfeiture.
- 11. Onus of proof as to forfeiture.
- 12. Waiver of forfeiture.
- 13. Breach of condition imposed by Section 119, Transfer of Property Act.
- 14. Starting point.

Other Topics

Article not limited to persons committing breach See Note 2, Pts. 5, 6 Article 139 and this Article See Notes 4. 5 ••• Forfeiture by alienation - Date of execution and not date of registration is starting point See Note 14, 1't. 3 •••

Plaintiff's ignorance or knowledge-Not material for starting point See Note 14, Pt 2 Successive forfeitures See Note 12, Pt. 3 •••

Suit framed in tort-Article not applicable ... See Note 2, Pts 2, 3 ••• Suit on ground of forfeiture and subsequent determination of tenancy -.. See Note 2, Pt 1 Note 4, Pt 6 Article not applicable

See Notes 4, 5 T. P. Act, Section 111-Cases filling under .

1. Legislative changes. - A provision corresponding to this Article was first introduced by Article 144 of the Act of 1571 It has been retained in practically the same form in this Article

* Act of 1877, Article 143 and Act of 1671, Article 144 Same as afore.

Act of 1859

No corresponding prov. on.

Article 143 Notes 2—3 2. Scope of the Article. — This Article applies to suits for possession on the ground that the plaintiff is entitled to possession by reason of forfeiture or breach of condition. The forfeiture or the breach of condition, as the case may be, must, by itself, give rise to a right to possession. A forfeiture by a tenant in a case governed by Section 111 of the Transfer of Property Act, for example, does not, by itself, entitle the landlord to possession of the property. To entitle him to do so, he must determine the tenancy in the way mentioned in that Section and it is the determination of the tenancy and not the forfeiture itself that will enable the landlord to see for possession. A snit, therefore, by the landlord against the tenant on the ground of forfeiture and subsequent determination of the tenancy will not be governed by this Article.

The Article does not apply to a suit framed in tort. Thus, where A, a landlord, suel B, his tenant, for an injunction directing B to fill up a tank execavated by him on the land, for an order that B should pay compensation to the plaintiff, and, in default, for ejectment of B, it was held that the suit was framed in tort and not on any breach of any contract and that Article 32 applied to the case. Similarly, a suit under Section 155 of the Bengal Tenancy Act for ejectment of a tenant on the ground of misuse of the land was held governed by Article 32 and not by this Article.

The Article is not limited to suits against the very persons who have entailed the forfeiture or committed the breach of condition. It applies to suits against any person who is in possession if it is based on forfeiture or breach of condition. Thus, a suit by a landlord against the alience from a tenant for possession on the ground that the tenancy was forfeited by the alienation, will be governed by this Article.

The Article will not apply where Section 10 of the Act is applicable, inasmuch as where that Section applies no suit will be barred by any length of time.

3. Forfeiture and breach of condition, distinguished. — A forfeiture imports neglect or fault on the part of a person the result

Article 143 - Note 2

- 1. See Note 4, infra.
- (1699) 26 Cal 564 (568) : 3 Cal W N 464 (F B), Sharoop Dass Mondal v. Jongessur Roy.
- 3 (1800) 26 Cal 564 (568) : 3 Cal W N 464 (F B), Sharoop Dass Mondal v. Joggessur Roy.
- Joggessur Roy.
 4. (1916) A I R 1916 Cal 995 (396); 23 Ind Cas 923, Taher Mondal v. Tarafdi Gharami.
- 5. (1930) A I R 1930 Mad 430 (432) : 124 Ind Cas 273, Ayyaswamy v. Manarik-
- G. See Note 5, infra
- (1887) 14 Mad 1 (9), Sathappayar v. Periasimi. (Sult for removal of trustee and to re-attach trust properties to trust on the ground that the trustee committed trench of trust.)

of which is to cause him to lose his property or his right. A breach of condition on the part of A which entitles B to possession of the property of A may or may not be the result of a neglect or fault of A. Where it is the result of such fault or neglect, the hreach of condition really works a forfesture. There may, however, be cases where a breach of condition may not be due to any fault or neglect of any person but would yet entitle another to possession of property. Thus, Section 119 of the Transfer of Property Act imposes a statutory condition that if either of the parties to an exchange loses any portion of the property received in exchange, he will be entitled to a return of the thing transferred by him in exchange. The happening of this event is a breach of a statutory condition giving rise to a right to possession of property, but it cannot be said that there is any forfeiture of property masmuch as the party losing the property on breach of the condition is not guilty of any fault or neglect.

4. Forfeiture of tenancy - General. - A tenancy is forfeited by a breach of an express condition which provides that on breach thereof the lessor may 10-enter, or by the lessee being adjudicated bankrunt and the contract of tenancy provides that the lessor may re-enter on the happening of such event, or by denial by the tonant of the landlord's title to the land. But a cause of forfeiture does not apso facto determine the tenancy Somo overt act on the part of the landlord showing his intention to determine the tenancy is necessary bofore the tenancy is determined.3

The above principles are of general application and will govern all cases of landlord and tonant, whether coming within the purviow of Section 111 (g) of the Transfer of Property Act, 1882 or not, There are, however, two important particulars in which cases coverned by Section 111 (g) of the Transfer of Property Act differ from other cases The first is that the overt act by the landlord showing his intention to determine the lease must, under Section 111 (g) of the Transfer of Property Act, be in the form specified therein, while in other cases it may be in any form 2 The other and more important point of difference is that, in cases governed by Section 111 (g) of

Note 3

Note 4

- I. See Section 111 (g) of the Transfer of Property Act
 - See Halsbury's Laws of Find and, 1910 Edn., Vol. 18, Page 530.
 - (1926) A 1 R 1926 Cal 193 (203) 85 Ind Cas 678, Gopsta Laman Pay v. Atal Singh
 - (1897) 24 Mad 246 (250) 10 Mad L Jour 415, Sringrass Feer v Muthusmy Pillar (Tenines subsists until landlerd exercises his of tion to deter-mine the tenancy)
- 2. Habbury's Laws of England, 1910 I dn Val 1- Page 531 [N 's Where the Transfer of Property Act Section III is not all attacke ".'s .! linglish law as to forfeiture of to sares and to le app and as to r; an consonance with justice, equity and good on an embeddith rays of Jeopore v. Ridman, A I R 1919 Po 11th See a se A I R 1.27 Mal 295 (298)]

^{1.} Oxford Dictionary Whitton's Law Lericon

Article 143 Note 4

the Transfer of Property Act, the forfeiture does not ipso facto furnish a cause of action for the landlord to sue the tenant for possession. The tenancy must have determined before the date of suit hy the avert act of the landlord specified in the Section. It is in fact the determination at the tenancy that furnishes the cause of action and not the forfeiture by itself. But in cases not governed by that Section, a forfeiture by the tenant does not furnish, by itself, a cause of action for the landlord to sue the tenant for possession, notwithstanding no never act has been done before the date of suit, showing an intention to determine the tenancy. On the cause of forfeiture happening in such cases, the right of action against the tenant comes into existence at nace, though the landlord has an option to take advantage of bis right or not. The election is not a condition precedent to the right of action and may be manifested by the institution of the suit itself.

Since, as has been seen above, a suit by a landlord against a tenant, in a case governed by Section 111 (g) of the Transfer of Property Ant, for possession on the ground that there has been a forfeiture of the tenancy, is based not on the forfeiture itself as furnishing a cause of action but really on the cause of action furnished by the determination of the tenancy, this Article has no application. The suit would be governed by Article 139.6 If the case is one not falling within Section 111 (g), Transfer of Property Act, the forfeiture itself, as has been seen above, furnishes a cause of action for the landlord to sue the tenant for possession and euch a suit would clearly be one governed only by this Article, if the lease has not been determined by the landlord before the date of the suit. 88 Where. however, the landlard has, before cuit, determined the tenancy by doing an avert act, the suit will be within both Article 148 and Article 139. In such cases Article 139 will, on general principles, prevail over Article 143, the latter being a general Article and the former a special one. Thus, in Srinivasa Aiyar v. Muthusamu Pillai. 6b a lessee in a case not governed by the Transfer of Property Act denied the landlord's title more than twelve years before the date of suit. The landlord bad determined the lease by a notice

^{8. (1937)} A I R 1937 Mad 295 (298) : 172 Ind Cay 690, Annamalas v. Vaiths-

^{(1928) 117} Ind Cas 812 (846) (Cal), Bejoy Chand v. Gurupada Haldar.

⁽¹⁹²⁰⁾ A I R 1920 Cal 866 (863): 60 Ind Cas 312, Motifal v. Chandra Coomar Sen.

^{4. (1937)} A I R 1937 Mad 293 (293): 172 Ind Cas 690, Annamalai v. Vaithi-

^{5. (1910) 6} Ind Cas 447 (450) : 34 Mad 161, Padmanabaya v. Ranga.

^{5. (1910) 6} Ind Cas 44 (400) . 34 Shat 101, 2 manusing v. Manya. (1937) A I R 1937 Mad 295 (293) : 172 Ind Cas 690, Annamalar v. Vaithi-

G. See (1937) A I R 1937 Mad 295 (299): 172 I. O. 690, Annamalai v. Vaithslinga. yar, ture nery

Article 143 Nntes 4—5

within twelve years of the date of suit. It was held that Article 139 applied to the case.

In Annamalar v. Vathilinga, however, it was observed broadly by Venkataraman Rao, J., that "where forfeiture itself gives rise to an action for possession, at once Article 143 would apply." In the undermentioned cases also, Article 143 was applied to cases not governed by the Transfer of Property Act where the tenancy had been determined within twelvo years in the suit but the cause of forfeiture had occurred more than twelve years before suit. It is submitted, on the principles discussed above, that the decisions cannot be accented as correct.

In Venkatarama Iyer v. Ponnusamy, a tenant failed to perform the services and thus committed a breach of a condition of the tenancy. The case was one not falling within Section 111 (g) of the Transfer of Property Act. On the failure of the tenant to perform the services, the landlord gave a notice to the former determining the lease and later on brought a suit in meetment. It was held that Article 143 applied to the case and further that time ran from the date of the determination of the tenancy by notice. It is submitted that this decision also cannot be accopted as correct. The suit being one by a landlord against his tenant after the determination of the tonancy, Article 139 clearly applies to the case and will prevail over Article 143 which is a general Article. Assuming, however, that Article 143 applies to the case, time will run from the date of for feiture and not from the date of determination of the tenancy. The view taken in that case that no forfesture takes place at all until the determination of the tenancy is not correct 9

5. Forfeiture of tenancy for hreach of condition of allenation—Sult against alience. — B is a tenant of A and one of the conditions of the tonancy is that if B alienates the tenancy, A would be entitled to re-enter on the land B does alienate the land in buscale of the condition and A sues the alience for possession. What is the Article applicable to the case? The answer will depend largely on the question whether the case is one governed by Section 111 of the Transferred Property Act on not

If the case is one governed by that Section, then, as has been seen in Note 4 ante, the only cause of action for the Lindlord will be

^{7 (1937)} A I R 1937 Wid 295 (299) 172 Ind Cas CO

⁷a (1907) 11 Cil W N 661 (662 663) toobs Sheath v H Matheusen (Purporting to follow 7 Suth W R 209 and 15 Mad 123)

⁽¹⁹²⁶⁾ A J R 1926 Cal 193 (203) 85 Ind Cas 678, Gopila Paman Poy v. A'al Smoh

^{8 (1935)} A I R 1935 Mad 915 (915, 919) 163 Ind Cas 96,

^{9 (1937)} A.I.R. 1937 Mad 295 (29~) 172 Ind. Cas. CO. Annana'ni v. Van'hilinga.

See also See, 112, Transfer of Property Act, which has a that a firsttime is watted by certain ast of a re-tail the lesser provided by was aware that for future has been recurred—If determination of the lesser tytle limited doing some overtact is necessary for effecting for fitting, there is no necessity for the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and the provided and

Article 143 Notes 5—6

the determination of the tenancy, and not the forfeiture by itself. whether the suit is ngainst the lesses or his alience. This Article will not therefore apply to suits based on such cause of action. Nor will Article 139 apply inasmuch as the suit is not one by the landlord against the tenant. It is conceived that Article 144 would apply to such cases. In Motilal v. Chandra Kumar, 18 the landlord sued the alience from his tenant for possession on the ground that the tenant forfeited his tenancy by reason of the nlienation in breach of the conditions of the tenancy. It was held that Article 143 applied to the case and that the suit was barred. It was further beld that the suit itself did not lie inasmuch as the tenancy, which was one governed by Section 111 (g) of the Transfer of Property Act, had not been determined before suit. It is submitted that the observation as to the applicability of Article 143 to the case is not correct. If, as was held, the tenaucy had not been determined and no suit would, in cases governed by the Transfer of Property Act, lie against the tenant except on the determination of the tenancy, it follows that no suit will lie even against the alience on the hasis of the alienation in breach of the condition

If the case is not one governed by Section 111 of the Transfer of Property Act, the forfeiture itself will give a cause of action against the nlience and the suit would consequently clearly fall within this Article. The question whether the tenancy was determined by an nvert act before suit does not affect the applicability of the Article to such cases.

6. Forfelture of tenancy by denial of landlord's title.—It is only in the case of n tenancy that there can be a forfeiture by denial of the landlord's title. In order to constitute such a forfeiture, the denial must be unequivocal and clear, and to the knowledge of the landlord. In Maharayah of Jeypore v. Rulmanni, 'their Lordships of the Privy Council, after stating that Section 111 (g) of the Transfer of Property Act, 1882, was in substance, the placing, in statutory form, the rules of English laws' which had been applied by Indian Courts as being in consonance with justice, equity and scool conscience, observed as faillness:

Note 5

1a (1920) A I R 1920 Cal 866 (867) : 60 Ind Cas 312.

1. (1937) A I R 1937 Mad 295 (299, 299, 300) : 172 Ind Cas 690, Annamala, v. Vaithilinga.

Note 6

- (1921) 71 Ind Cas 270 (271): 41 Mad L Joue 525 (527), Sreedharam Valia Rajah v. Parakkat.
- 2 (1010) A I R 1910 P G 1 (4]: 42 Mad 590: 46 Ind App 100: 50 Ind Cas 631
- 2a. See also (1901) 24 Mad 246 (250): 10 Mad L. Jour 415, Srinicasa Iyer V. Muthusamy Pillau.
 (1902) 26 Mad 157 (160): 12 Mad L. Jour 199. Parameter v. Vittarpa
 - Skanbhaja. (1935) A I R 1915 Mad 918 (919), Venlatarama v. Ponnusami.

Article 143 Notes 6—7

"Now the rule of English law is that a tenant will forfeit his holding if he denies his landlord's title in clear, unmistakable terms, whether by matter of record, or by certain matters in pais. The qualification that the denial must be in clear, unmistakable terms has not unfrequently been applied by the Courts in India, which have held that where a tenant admits that he does hold as tenant of the person who claims to be his landlord, but disputes the terms of the tenancy and sets up terms more favourable to himself, he does not, though he fails in establishing a more favourable tenancy, so far deny the landlord's title as to work a forfeitine."

A forfeiture by donial of the landlord's title must have occurred before the suit is instituted. Denial in the suit itself will not work a forfeiture of which advantage can be taken in that suit.

Where there is no relationship of landlord and tenant between the parties, there can be no question of any forfeiture by denial of the landlord's title Where, therefore, in a suit a plca of forfeiture hy denial of title and limitation is raised but it is found that there was no relationship of landlord and tenant at all between the parties, the suit cannot be considered to be based on forfeiture and consequently this Article cannot have any application. This is the view on which the decisions in Bhairab Chandra v. Kadam Beras and Abinash Chandra Ghosh v. Narharis must be considered to have been based. The observations in those cases that Article 143 does not apply when the relationship of landlord and tenant does not exist, cannot he understood as meaning that the Article applies only to cases between landlord and tenant, a view which is obviously opposed to the wording of the Article In Jadu Nath Guha v Kasiswar Guha,7 Mitter, J., considered the two cases above mentioned and observed as follows:

"In both the cases cated the sant was brought on the footing that there was a tenancy and the same had been forfeited. It was held that Article 143 was not applicable as there was, at no time, any relationship of landford and tenant. If that was so, there was, or could be, no question of forfeiture.

7. Forfeiture in cases other than tenancy. — It has been seen in Noto 1 ante that a tenancy can be forfeited in certain cases

^{3 (1919)} A I R 1919 P C I (t) 42 Mad 5×9 46 Ind App 109 50 Ind Cas 631 (P.C), Mahararah of Jewrere v. Bukmana Pattamahadera

^{(1921) 71} Ind Cas 270 (271) 41 Mad L Jeur 525 (527), Seeell team Volta Happh v Parakkat.

^{4 (1919)} A I R 1919 P C 1 (4) 42 Mad (80 46 Ind App 109 00 Ind Cas (31 (P C), Maharajah of Jespere v Pulmara Partimala lett

^{6. (1914) 22} Ind C is 24 (29, 20) (Cal)

C (1930) A I R 1930 Cal 165 (167) 57 Cal 2-3 123 Ind Car 444

^{7 (1935)} VIR 1935 Cul 779 (783) 160 Ind Cas 250

Article 143 Notes 7—9

But interests nwned by persons other than tenants can also be forfeited by rules of law or by reason ni express conditions, positive or negative. See Nntes 8 to 10 below.

This Article is in general terms and applies to all suits for possession by reason of any forfeiture or breach of condition.²

- 8. Forfeiture on remarriage of Hindu widow. A Hindu widow forfeits, nnder the Hindu Widows' Remarriage Act (Act XV nf 1856), the estate inherited by her from her husband, if she remarries. The question has arisen whether, in such a case, the reversioner entitled to the property is bound to suo within twelve years of the date of forfeiture as provided by this Article, or whether be may sue within twelve years of the death of the widow as provided by Article 141. In Nathu v. Mt. Nai Bahu, it was held by the Judicial Commissioner's Court of Nagpur that Article 143 applied to such cases. It was also observed that if Article 141 was to be applied. the remarriage must be taken to be the widow's civil death so that the starting point under that Article also would be the date of remarriage. In Tilottama Dasi v. Madhu Sudan Giri.2 the High Court of Calcutta doubted the correctness of both the views expressed in the Nagnur case but did not decide the question as it came to the conclusion that there was, in fact, no valid remarriage on the facts of that case. In Md. Azim v. Md. Saadat Ali.3 the Chief Court of Oudh applied Article 143 to such a case.
- 9. Forfeiture ou unchastity of Hindu widow.—An award projected that A was to be in possession of certain property for her life, that B was to get the same after A's death, but that if A became unchasto, B would be entitled to take possession uf the properties at once. A heame unchaste. B sued for possession within twelvo years of A's death but beyond twelvo years of the date of her unchastity. It was assumed by the High Court of Allahabad that this Article would have applied if the forfeiture had not been waived by the plaintiff. It was, however, held that the forfeiture was waived and that, consequently, the suit was not governed by this Article but by Article 141.

Note 7

- (1935) A I R 1935 Cal 779 (782): 160 Ind Cas 250, Jadu Nath Guha v. Kasiswar Guha.
- (1935) A I R 1935 Cal 779 (762): 160 Ind Cas 250, Jadu Nath Guha v. Kasiswar Guha.

Note 8

- 1. (1915) A I R 1915 Nag 57 (57): 29 Ind Cas 612: 11 Nag L R 86.
- 2. (1928) A I R 1928 Cal 714 (715) : 117 Ind Cas 703.
- (1931) A I R 1931 Oudh 177 (223): 136 Ind Cas 642. (Case of Muhammadan widow but Hindu law was applicable under the Oudh Estates Act of 1869)

Nnta 9

 (1937) A I R 1937 All 268 (270): I L R (1937) All 424: 169 Ind Cas 5%, Rashik Lal v. Mt. Radha Dhulanga.

Notes 10 - 11

10. Other instances of forfeiture. - A made a gift to B on . Article 143 condition that B should maintain and render certain services to A and that A would be entitled to re-enter on the gifted property on breach of the condition. B failed to maintain A and render the services and A sued B for possession. It was held by the High Court of Labore that this Article applied to the case.1

A, B, C and D partitioned their properties and there was a clause in the deed of partition that if any one of the co-sharers purchased the raivati or under-raivate holding situate within the allotment of any of the other co-shaters, such other co-shater would be entitled to take that possession of the property purchased. B purchased the raigate holding situate within the allotment of A, and A thereupon sued for possession, It was held by the High Court of Calcutta that this Article applied to the case and that time ran from the date of the nurchase.2

A sold a certain property to B who, as part of the contract of purchase, agreed to pay A certain fees annually in default of which A was to be entitled to the possession of a certain portion of the land sold B failed to pay the dues and A sued for possession. It was held that the suit was governed by this Article.3

See also the undermentioned cases.4

11. Onus of proof as to forfeiture. - It is for the party who sets up forfeiture to prove it. Where a penalty of forfeiture is sought to be enforced, it cannot be presumed or inferred, when the deed between the parties is silent on the point In Bibi Sahodra v. Rai Jang Bahadur,2 where A, and B a Hindu widow, entered into a commomise under which they were to empy a certain property during the lifetime of B, that B should not alienate her interest and that A was to get the property after B's death, their Lordships of the Privy Council observed as follows

Note 10

1 (1932) Ind Rul 1932 Lah 645 (646), Budha v. Hangro

2, (1935) A I R 1935 Cal 779 (782) 160 Ind Cas 250, Jadu Nath Guha v. Kasısuar Guha

S (1892) 4 All 493 (496) 1852 All W N 125, Bhogray e tentshan 4h

4. (1883) 1883 Pun Re No 150, Dhian Singh v Mehan Singh (Want-ul arz providing for forfesture if resident of village haves the village - Sent for possession lased on such forfesture is governed to Article 143)

(1920) A I R 1920 Cal 682 (682) 59 Ind Cas 308 Kala Kant v Lapana Kanta. (A made a will to quenthing a house to b for life with remain for to (with condition a kied that B should not I are the house and if he did so, C would be entitled to procession at once-On b's having the house, C' saed for processon within twelve mare of Ladeath has me re than twibe sears after be left the hous -Held that sun was turned as forfeiture took (The more than the he water let to out !

Note 11

1. (1867) ? Sush W R 209 (210), Tumeer of free Ch., they v Meer Survey Lhan 2 (1881) 8 Cal 224 (229) 8 Int App 210 4 Sar 2 4 4 Is 3 Jun 308 11 4)

Article 143 Notes 11-12

"There are no words of forfeiture and it would be a very strong thing and a very unusual thing to import a forfeiture when the parties have not provided for one, and where there is no rule of law attaching forfeiture to a particular act."

Where a grant is made with a condition of porformance of service attached, the more fact of non-performance of the service is not sufficient in all cases to show that the land granted is forfeited to the granter. Where a grant was made by A to B on condition of B performing cortain services, namely, attendance on certain ceremonial occasions, it was held by their Lordships of the Privy Council that the refusal to render these services did not operate to create a forfesture or give occasion for resumption. Where, in a lease, there was a condition against alienation by the tenant, but there was no provision for re-entry on breach of the condition, it was held that the mere breach of the condition did not operate as a forfeiture.5

12. Waiver of forfeiture.-Where a cause of forfeiture arises in favour of a particular person, that person can, as a general rule, waive the forfeiture. The effect of the waiver is to wipe off or bar the right of action which arises in his favour on the forfeiture. He can, bowever, where there is a fresh cause of ferfeiture, take advantage of it and bring his action for rolled on the basis of such forfeiture.3

In order to constitute waiver there must be some positive act on the part of the person in whose favour the cause of forloiture has arisen. A mere lying by or mere inaction is not waivor.

An award provided that A was to be in possession of certain properties for her life, that B was to get the same after A's death but that if A became unchasto. B would be entitled to take possession of the proporties at onco. A became unchaste but B did not take any etens to get possession of the proporties. He however sued for possession within twelve years of A's death but beyond twelve years of the

Note 12

- I. See cases cited in Foot-Note (3). 2. (1937) A I R 1937 Mad 295 (298); 172 Ind Cas 690, Annamalai v. Vauhi-Imaa
- 3. (1916) A I R 1916 Lah 403 (401): 35 Ind Cas 235, Locha Ram v. Jindiradda Khan
 - (1922) A I R 1922 Mad 290 (295) : 55 Ind Cas 350, Zamoren Raja Avergal. Calicul v. Samu Nair.
- (1937) A I R 1937 Mad 295 (293): 172 Ind Cas 690, Annamala: v. Vaithilinga. 4. See Note 11 to Article 75, ante.
 - See also Halbbury's Lows of England, Vol. 18, rage 537.
 - [See also (1929) A I R 1929 Sind 140 (144): 116 Ind Cas 581, Nenomal v. Chandumal
 - (1897) 1897 Pun Re No. 28, Achhar Mal v. Hukman.]

^{3 (1914)} A I R 1914 Cal 4 (20) : 21 Ind Cas 481 (F B), Bhagwat v. Sheo Pershad.

^{4 (1919)} A I R 1919 P O I (5) . 42 Mad 589 : 46 Ind App 109 : 50 Ind Cas 631 (PC), Maharajah of Jeypore v. Rukmans Pattamahaders.

^{5. (1902) 26} Mad 157 (161); 12 Mad L Jone 189, Parameshra v. Vettappa Shanbhaga.

unchastity of A. It was held that B waived the forfeiture by not exercising his option to take advantage of the forfeiture. It is submitted that this view is not correct. The case was one of mere inaction on the part of B and this will not, as has been seen already, amount to a waiver. In the undermentioned case it was doubted whether a forfeiture on the remanings of a Hindu widow could be waived by the reversioner entitled to the property

13. Breach of condition imposed by Section 119, Transfer of Property Act. — Where A and B exchange properties, but A as subsequently deprived of the property got by him in exchange, and thereafter A sues B for possession under Section 119, Transfer of Property Act, the suit would be governed by Article 143 as one for possession on breach of a statutory condition.

Section 119, Transfer of Property Act, however, provides that on the deprivation of any portion of the property exchanged, the whole transaction of exchange is nullified and the party deprived may get back the whole of the property given by him in exchange. Where A and B entered into a contract whereby they exchanged their properties with the condition that if either lost any portion of the property exchanged, and A, on so losing a portion, eued B for an equivalent portion out of the property exchanged, it was held that the suit was not one based on a statutory condition under Section 119 of the Transfer of Property Act but was meetly one for specific performance of a contract governed by Article 113.

In Srintrass Iyenga v. Kottapalki Johnsa Routher, where there was a contract of the same nature as is specified in Section 119 of the Transfer of Property Act, it was held that euch contract was in the nature of a condition subsequent and that a suit hased thereon was sovered by Article 143.

14. Starting point.—The starting point under this Article is the time when the forfeiture is incurred or the condition is broken. The

5 (1937) A I R 1937 All 268 (270): 169 Ind Car 586. 1 L R (1937) All 421,
 Rashal Lai v. Mt. Radha Dhulanga
 6 (1928) A I R 1928 Cal 714 (715): 117 Ind Car 703, Sm. Tholiana Dan v.

(110) 1 111 111 011 100, 1111

Note 13

 (1907) 30 Mad 315 (317, 318): 17 Mad L Jour 149, Pajagopalan v. Somasundara Thamberan.

2. (1899) 9 Mad L Jour 187 (138), Veera Pillas v. Pomnambala Pillai.

S. (1920) A I R 1920 Mad 812 (812) · 42 Mad 690 : 51 Ind Cas 939.

Madhu Sudan.

Note 14

See (1935) A I R 1935 Born 98 (100): 156 Ind Cas 339, Daluckand v. Shanta.
(Daire: It was held that there was no Irach of condition at all—It
was observed, however, that if Article 183 artiked, time ran from the
date of the breach of condition.)

Anticle 143 Note 14

date on which plaintiff acquires knowledge of the acts which would occasion the forfeiture or constitute the breech of the condition is not the starting point.2

Where a forfeiture takes place by teason of an alienation by a tenant, it is the date of the execution of the document and not the date of the registration thereof that is the starting point : the registration dates back to the date of execution 3

A sold certain property to B who agreed, as part of the contract of sale, to nav A certain fees annually in default of which A was to he entitled to the messession of a certain portion of the property sold. B failed to pay the dues and A sued for possession. It was held that the breach of condition occasioning the forfeiture was not a continuainc one within the meaning of Section 23 of the Act and that time would, under this Article, run from the date when B first failed to nay the fees.4

Keticle 144

144.* For posses-[Twelve years, | When the nossion of immoveable property or any interest therein not hereby otherwise specially provided for.

session of the defendant becomes adverse

The Commentary on Article 144 is given under Article 142, ante.

å

Act of 1877, Article 144 Same as above.

Act of 1871, Article 145

Columns 1 and 2-Same as above.

Column 3 ran as follows "When the possession of the defendant, or of some person through whom he claims, became adverse to the plaintiff."

Act of 1859, Section 1, clause 12

Limitation of perty.

To suits for the recovery of ammoveable property of twelve years. Suits of any interest in immoveable property to which no other for immoreable pro- provision of this Act applies-The period of twelve years from the time the cause of action arose.

- 2 (1916) A I R 1916 Lah 101 (103) . 36 Ind Cas 565, Locha Ram v. Jindwalds Khan.
 - (1922) A I R 1922 Mad 290 (295) : 55 Ind Cas 980, Zamorin Raja Acergal, Calicut v Samu Nair.
 - (1930) A I R 1930 Mad 430 (432) . 121 Ind Cas 273, Ayyasamy v. Manarikrama.
- [See also (1916) & I R 1916 Lah 403 (103, 404) 35 Ind Cas 235. Loche Lam v Jendwadda Khan.] 3. (1996) A I R 1996 Lah 394 (400) . 17 Lah 403 : 186 Ind Cas 157, Dhuman
- Khan v. Gurumulh Singh 4. (1882) 4 All 493 (496) : IS-2 All W N 125, Bhojraj v. Gulshan Als.

PART IX - Thirty years.

145.* Against a de-Thirty years. The date of positary or pawnee to recover moveable property deposited or pawne.

Article 145

Synopsis

- 1. Legislative changes.
- 2. "Moveable property."
- 3. "Deposit" and "depositary," meaning of.
- 4. Articles 49 and 145.
- 5. Suit against heirs of depositary or pawnee.
- 6. Starting point.
- 7. Nature of suit must be ascertained from the plaint.

Other Topics

Deposit of Government Securities ... See Note 2, Pts 2 to 11, Note 3, Pt 12 Deposit of money See Note 2, Pts 2 to 11, Note 3, Pt 10 Altere demand and refusal will not take case out of this Article ... See Note 4, Pts 5, 6 Suit for redemption of piedge See Note 7, Pt. 2

1. Legislative changes.

Before the Act of 1859, there was no limitation provided for a suit against a depositary or pawnee Such a suit was not barred by any length of time ¹

Act of 1877 Same as above.

Act of 1871
PART IX - Thirty years

147 — Against a depositary or pawnee to recover moveatible property deposited or pawned

Thirty years. The date of the deposit or pawn, unless where an arknowledgment of the tulle of the deposit or pawner, or of his right of redemption has

less where an acknowledgment of the title of the deponitor or pawnor, or of his right of redemption has before the expiration of the prescribed pendo been made in writing, signed by the depositary, or pawnee, or some person claiming under him, and in such case, the date of the acknowledgment

Act of 1859, Section I, clause 15

La
thirl
year:
dep
paur
gagee

claiming under him, from the date of such acknowledg-

Article 145 - Note 1

Artiole 145 Notes 1—2

The Act of 1859 provided in clause 15 of Section 1 a limitation of thirty years for a suit against a depositary or pawnee of moreable property, or a mortgagee of immovable property, the starting point being the date of the deposit or pawn or mortgage.

Article 147 of the Act of 1871 repeated the provisions of clause 15 of Section 1 of the Act of 1859 so far as deposits and pawns were concerned and Article 148 repeated its provisions so far as mortgages were concerned.

In the case of a mortgage, the Act of 1877 altered the law by providing a period of sixty years from the time when the right to redeem or the right to recover possession accrued, thus making the starting point coincide with the accruer of the cause of action.

Article 145 of the Act of 1877 was a re-enactment of Article 147 of the Act of 1871, the provision as to acknowledgment, however, being omitted from the third column, as a general provision as to extension of the period of limitation by an acknowledgment was made in Section 19 of that Act.

The present Article simply re-enacts Article 145 of the Act 15 of 1877.

2. "Moveable property." — There is a difference of opinion as to whether the words "moveable property" as used in this Articlo include money or other things which are intended to be consumed in the using and are capable of being estimated by number, weight or measure, and replaced by, such as, corn, wino, or money: in other words, whether the words "moveable property" would include the subject-matter of a contract of multum in Roman Law, that is, a contract of loan of something which is not to be returned in specie, but which is to be replaced by something similar and equivalent.\(^1\) According to the High Court of Bombay\(^2\) and the general trend of opinion of the High Court of Settlata\(^3\) the words "moveable property" in this Articlo would include money or other things capable

2. (1919) A I R 1919 Mad 972 (985) . 40 Mad 1010 : 43 Ind Cas 31 (F B), Seels Kulliv, Kunhi Pathumma (Per Brinivasa Iyengar, J.)

Note 2

- 1. Halsbury's Laws of England, Vol. 1, pages 540, 511.
- 2. (1876) 1876 Bom P J 179, Vinayak v. Sadashiv.
- (1920) A I R 1920 Cal 167 (168): 55 Ind Cas 515, Nanda Lal Dose v. Ashulosh.
 (1907) 6 Cal L Jour 595 (537, 539), Gobind Prasad v. Paina Municipality.
 (Per Holmwood, J.—A return of current coin is a return in repeate.)
 - (1885) 12 Cal 113 (115), Upendralal Mukhopadhya v. Collector of Rajshahye.
 - (1904) 31 Cal 519 (523): 8 Cal W N 500, Administrator General of Bengal v. Sm. Kristolamini Dassee.
 - (1916) A 1 R 1916 Cal 869 (870) : 34 Ind Cas 959, Ganghars Chahratarty v. Nabin Chandra.
 - (1370) 14 Suth W R 491 (493): 5 Beng L R 403, Gour Narayan Mazumdar v. Brajanath Kundu. (Assumed)
 - (1869) 11 Suth W R 491 (492); S Beng L R App 57, Gobind Chunder Sein v. Collector of Dacca. (Do) [But see (1870) 25 Suth W R 415 (415), Budha Nath Boss v. Bama
 - Churn Mookerjee. (1970) 14 Suth W R 822 (322), Shumboo Chunder Mullicl, v. Pran Erist Mullicl.]

of being replaced. In Administrator General of Bengal v. Sm. Kristo Kamini Dassee, K made over certain Government Promissory Note Securities to I to be kept by bim in deposit and, if necessary, to be used by him for raising funds, and I was to draw the interest accruting on the securities from time to time and pay the same to K, and in case I had occasion to pledge or sell the securities he was to redeem or replace the same on being required to do so by K It was held by Maclean, C J, and Stevens, J, that I was the "depositary" within the meaning of this Article, notwithstanding that the securities may not be returnable in specie, if they were returnable as securities, though replaced. Mr Justice Hill who was also one of the Judges constituting the Bench, dissenting from the above view, observed as follows:

"An essential characteristic of a doposit properly so called is, that the thing deposited should not be used by the deposite and his liability is to roturn in specie the very thing deposited, when his right to retain it has determined, the general property in the subject-matter of deposit remaining meanwhile in the depositor. It appears to me further that, although the loan was of the kind generically described as a loan for use, it foll under that particular species of gratuitous hallments, to which the term mutuum has been applied and of which the distinguishing characteristics are that the property in the subject of the bailment passes to the borrower, and that he satisfies the obligation cast upon him by the contract, if he restores, not the actual thing lent, but some other thing of the same kind."

In Lala Gobind Prasad v Chairman of Patna Mu incipality.

Mr Justice Mockeri observed that the Legislature used the word

"specific" before the words "moveable property" whenever property
was referred to, which was recoverable in specie, that this Article
did not use the word "specific" before the words "moveable proporty" but that the words "moveable property" were held by the
Privy Council in Asghar Ali v. Kurshedali. in a case arising under
Article 89 of the Act, to include monoy, and that therefore the
words "moveable property" in this Article must be held to include
also money.

On the other hand, the High Courts of Allahabad,7 Madras and

^{4, (1904) 31} Cal 519 (528) 8 Cal W N 500

^{5 (1907) 6} Cal L Jour 535 (539)

^{6 (1902) 24} All 27 (49) 23 Ind App 227 3 Bom L R 576 8 Sar 142 (P C)

^{7. (1894) 16} All 256 (258) 1894 All W N 73, Jasoda Bebs v Parmanand

⁽See alw (1919) A I R 1919 All 102 (103) 41 All 643 55 Ind Cas 45, Kalyan Mal v Kishen Chand]

^{8. (1914)} A I R 1914 Mad 4 (6) 22 Ind C14 60 Balakrishnudu v Naravanasuamy (Confirming A I R 1914 Mad 51)

⁽¹⁹¹⁵⁾ A I R 1915 Mad 717 (719) 25 Ind Cis 812 Srinitati Amangar v Rangarami dipangar (1918) A I R 1914 Mad 72- (730) 42 Ind Cis 519 Genindisamy I v' 21 v

Municipal Council humbal orani [But see (1889) 6 Mad 351 (352) San ic. I .aix frantharatha]

Articie 145 Notes 2_3

Lahore have held that the words "moveable property" in this Article do not include money. In Balakrishnudu v. Narayanaswamy, 10 Sir Arnold White, C. J., stated the reasons why the expression "moveable property" cannot be construed so as to include money, as follows:

"The very fact that the period of limitation is so long goes some way to indicate, to my mind, that the Legislature intended that the transaction to which so unusually a long period of limitation is applicable should not be the sort of transaction which is of every day occurrence—the lending of money and an agreement to pay on demand or on a specific date. I would only add one other reason and that is that the words are "against a depositary or pawnee to recover moveable property denosited or pawned." The word 'pawnee' which occurs in conjunction with the word 'depositary' seems to be wholly inappropriate to the case of money."

It is submitted that the Madras view is correct on principle.

Where the specific coins handed over are to be returned, they would be 'moveable property' within the meaning of this Article.11

Government Securities12 and a right to malikana13 are also moveable property, but not a right of brit jujmanka,14 or land, or other immovable property.15

3. "Deposit" and "depositary," meaning of. - A deposit of moveable property is a particular form of bailment of goods.1

9. (1919) A I R 1919 Lah 822 (323) : 47 Ind Cas 592 : 1919 Pun Re No. 4. Dalipa v. Labhu Ram.

(1882) 1882 Pun Re No. 74, Ganeshs Lat v. Chunns Lat.

(1936) A I R 1936 Lah 629 (635) : 165 Ind Cas 723 : 17 Lah 737, Municipal Committee, Ameritar v. Ralia Ram. (Quere.)

10. (1914) A I R 1914 Mad 4 (6) : 22 Ind Cas 60.

11. (1919) A I R 1919 All 102 (103) : 41 All 643 : 55 Ind Cas 45, Kalyan Mal v. Kashen Chand.

(1919) A I R 1919 Lah 322 (323) ; 47 Ind Cas 592 ; 1919 Pun Ro No. 4, Dalipa v. Labhu Ram.

(1882) 1882 Pun Re No. 74, Ganeshi Lal v. Chunnilal.

(1894) 16 All 256 (258) : 1891 All W N 73, Jasoda Dibs v. Parmanand.

12. (1938) A I R 1938 P C 110 (112) : 173 Ind Cas 612 : 32 Sind L R 426. Md. Habibul Haq v. Seth Tilam Chand. (1904) 31 Cal 519 (529) : 8 Cal W N 500, Administrator General of Bengal v.

Kristo Kamini Dassee. (On appeal from 7 Cal W N 470) (1931) A I R 1934 Cal 87 (91, 92) : 61 Cal 119 : 150 Ind Cas 399, Bibhu Bhusan v. Anads Nath

13 (1865) 2 Sath W R 162 (163), J. Lyons v. Paj Chunder Shikeressur Roy.

14. (1883) 10 Cat 73 (74) . 13 Cat L R 263 : 8 Ind Jun 197, Raghoo Pandey V. Kassy Paren. (Under Hindu law It is Immovable property)

15. (1867) 4 Rom 11 C R A C 155 (160, 162), Radhabai v. Shama. (1970) 2 N W P H C R 43 (43), Doorjun v. Chaina.

Note 3

1. (1921) A I R 1921 Cal 416 (418) : 69 1. C. 900, Promoth Nath v. Prodymno. (1910) 5 Ind Cas 1 (3): 83 Mad & Cangineni Kondiah v. Kondarra Naidu.

Article 145

In Coggs v. Bernard, la Lord Hott stated the law of England as regards bailments very much as it is to be found in the Digest and Institutes of Justinian using, with slight variations, the torms there given to describe the different kinds of bailments. He divided bailments into six classes —

- (a) Depositum: The deposit of a chattel with the bailee, who is simply to keep it for the bailor without reward or recompense.
- (b) Mandatum Where the bailee has, without reward, to do something for the bailer or with the chattel hailed.
- (c) Commodatum —Where the hailor, without recompense, lends a chattel to the bailee for him to use.
- (d) Pignus: Sometimes called Vadium or pawn, where the bailee holds the chattel confided to him as a security for a lean or debt, or the fulfilment of an obligation.
- (e) Locatio re: Where the goods are lont to the bailee to be used by him for hire.
- (f) Locatio operis faciendi Where goods are delivered to be carried or something is to be done about them for a reward to be paid to the bailee.

A denosit of chattel in English law means the depositum in the Roman law, i. e., the first of the six classes above mentioned, namely, a bailment of a chattel to be kept for the bailor and returned upon demand without recompense. 16 There is a difference of opinion whether the word "deposit" in this Article means the same thing as the denoutum in Roman law or has a wider meaning so as to include other classes of bailment also. In the undermentioned cases,2 the High Court of Calcutta took the view that the word "deposit" in the Article is used in accordance with the old use of the word depositum. In later cases, however, the same Court has taken the view that the word has been used in the Article in a wider sense than that of depositum, In Gangahari Chakrararti v. Nabin Chandra,3 where one P made over certain ornaments to B, a goldsmith, to be melted and made into new ornaments, it was bold in a suit by P to recover the gold or its price that Article 145 applied so far as the first of the alternative prayers was concerned. It may be noted that the transaction was in the nature of a locatio operis faciendi, the sixth class of hallment mentioned in the English case of Coogs v. Bernard above

¹a 92 E R 107 (103) : 1 Sm L C (11th Edn.) 173 : 2 L D Raym 909.

¹b. Halsbury's Laws of England, Vol. 1, page 526
See also Wharton's Law Lexicon: "Deposit",

^{2. (1899) 16} Cal 25 (29), Ishur Chunder v. Jebun Kumars.

^{(1891) 18} Cal 234 (241), Secretary of State v. Fasel Als. (Overruled on another point by 20 Cal 51)
(1870) 14 Suth W R 322 (321), Shumboo Chunder v. Pran Kru'o.

^{8, (1916)} A I R 1916 Cal 869 (870) : 34 Ind Cas 959.

· Artiele 145 ·Note 3 referred to. In Bibhu Bhusan v. Anadi Nath, where the transaction was in the nature of a commodatum, or loan of chattel for use of the hallow without roward, it was held that a cuit for recovery of the property was governed by Article 145, an the ground that the word "deposit" has been used in the Article in the simple sense that when one man's property was handed by that man to another, the latter became a depositary of it.

The decisions of the Madras High Court also are conflicting. In Narayanaswamy v. Aiyasamy, where A gave B twenty loose rubies in order that B might give thom to a goldsmith and have them made into a newel and on the failure of B to do so, A sued him for the rubies or their value, it was held by Mr. Justice Sadasiva Iver that the transaction was a mandatum and not a deposit in the legal sense as the moveable property bailed was not itself to he returned in the condition in which it would naturally remain at the time of the return, (along with any natural accretions, if any such accretions bannened to be added) but the defendant promised to have some work performed in connexion with the rubies and to deliver a jewel into which the said rubies had to be worked. In Balakrishnudu v. Narayanaswamy Chetty.6 it was held by Wallis, J., that the word "denosit" in the Article most be taken to mean the sort of bailment known to lawyers under that name in the Roman law of bailments which was accepted by Bracton and afterwards by Lord Holt in Cogos v. Bernard 1 He further observed as follows .

"This deposition is a bailment of a specific thing to be kept for the hallor and returned when wanted as opposed to commodatum where a specific thing as a horse or a watch is lent to the bailes to be used by him and then returned; and hoth are contrasted with mutuum where corn, wine, or money or other things are given to be used and other things of, the same nature and quality are to be returned instead. In my opinion there is no ground for holding that in the Acts of 1859 and 1871 the word 'deposit' in the Sections and Articles already referred to included so-called deposits of money or other things which were not intended to be kept but to be used, and there is nothing in the Acts of 1877 and 1996 to show that any different construction should now be put an Articles 133 and 145.

"The framers of these Acts were lawyers and must be taken to have used the term deposit in the ordinary legal sense. This conclusion is not, I think, in any way affected by the fact that in 1677 the Legislature introduced a new Article 60 which speaks of "money deposited under an agreement that it shall be payable on demand," thus using the word "deposit" not in its legal but in its popular sense."

^{4. (1934)} A I R 1934 Cal 87 (91) 61 Cal 119: 150 Ind Cas 398.

^{5. (1913) 18} Ind Cas 921 (921) (Mad).

^{6 (1914)} A I R 1914 Mad 51 (53) · 37 Mad 175 : 24 Ind Cas 852.

^{7 92} E R 107 (111) : 1 Sm L C (11th Edn) 173 : 2 L D Raym 909.

The decision of Wallis, J., was affirmed on appeal in Balakrish. nudu v. Narayanaswamu Chetty.8 and Sir Arnold White, C. J., entirely concurred in the reasons stated by Wallis, J. A contrary view has, however, heen taken in Krishtappa Chetty v. Lakshmi Ammal,9 namely that the word 'deposit' in the Article has not been used in the limited sense of depositum but in a wider sense as including a commodatum, i. e., a bailment for the use of the bailee. Schwabe, C. J., observed that the Legislature meant to use simple and plain language and in using the words "deposit" and "depositary" they meant simply to say that when one man's property was handed by that man to another, he became a depositary of it unless there was some. thing in the terms of the handing over which would prevent his being treated as a person with whom it was deposited at all. "It is almost impossible," observed his Lordship further, "that, when they were making a period of thirty years applicable to cases of goods handed over either for safe custody or in pledge, they should have intentionally made a shorter period for cases of goods handed over for the advantage of the person to whom they were handed. It would be most illogical to allow a shorter period in the case when the "depositee," if I may use the word, gots the advantage than is allowed in the case where the depositee is merely doing something for the advantage of the depositor, and it is to be observed that cases not coming under Article 145 come nowhere, unless indeed they can be brought within the words of Article 49."

In the undermentioned case, 10 in which the question was whether a denosit of money was covered by this Article, the High Court of Labore held that a deposit of money was not within this Article and rested its decision on the view expressed by Wallis, J. in Bala. krishnudu v Narayanaswamy Chettu 11 In Gurbakhsh Singh v. Kharaiti Ram,12 which was a case of a bailment of jewels for uso by the defendant at a wedding without recompense, the same High Court held that this Article applied on the ground that the fact that the defendant was "allowed to use the same did not take the transaction out of the category of deposits as that expression is used in Article 145."

The Chief Court of Oudh has adopted the same view as that of Wallis, J., in Balakrishnudu's case" and has held that a bailment in the nature of a commodatum is not within Article 145 13

It is submitted that the view expressed by Wallis, J., in Bala. krishnudu's case14 referred to above is correct on principle Clause 15

^{8, (1914)} A I R 1914 Wad 4 (6) 22 Ind Cas 60. 9 (1923) A I R 1923 Mad 578 (5°0) 72 Ind Cas 842.

^{10. (1919)} A I R 1919 Lah 322 (323) 47 Ind Cas 592 . 1919 Pun Re No 4. Dalina v. Labhui Bam.

^{11. (1914)} A I R 1914 Mad 51 (53, 51) 37 Mad 175 24 Ind Cas 652.

^{12, (1930)} A I R 1930 Lab 913 (914) 129 Ind Cas 199

^{13 (1930) \} I R 1930 Ondh 595 (396, 897) 126 Ind Cas 682 6 Luck 80,

Chaturgun v Shahrady 14. (1914) v I R 1914 Mad 51 (53, 54) 37 Mad 175 24 Ind Cas 652, Ediabrushnulu v Narayanaswamy.

Article 145 Notes 3-4 of Section 1 of the Act of 1859 used practically the same words as those that have been used in this Article, and it had heen held in cases arising under that Act that the clause should be construed with reference to the law of limitation in England¹⁵ and that the word "deposit" in the clause referred to the "depositum" of the Roman law and not to commodatum or any other form of hallment. The Legislature in enacting Article 147 in 1871 (corresponding to this Article) must have been aware of the earlier decisions and would have used different language than that used in clause 15 of Section 1 of the Act of 1859 if a wider meaning was considered necessary to be given to the word "deposit." Again, the word "deposit," with reference to deposit of chattel, has a definite and settled meaning in English law, and where the same word is used by the Indian Legislature, it must be understood in the same sense unless there is any indication to the contrary

In execution of a decree, cetain moveable property was attached under the provisions of Order 21 Rules 44 and 45 of the Civil Procedure Code and put into the custody of a sapurdar. X objected to the attachment and the Court upholding the objection, ordered the sapurdar to return the property to the objector It was held that the order created the relationship of depositor and depositary between the objector and that a suit by X for recovery of the property from the sapurdar was governed by this Article. 17

A entrusted a jewel to B to procure a loan for A B pledged the jewel and obtained the loan. After the loan was paid off, B got back the jewel and retained possession of it. On B^3 refusal to return the jewel to A, the latter sued B for recovery thereof. It was held that as there was no agreement that after the repayment of the loan the jewel was to remain in deposit with B, the suit was not governed by Article 145 bit was governed by Article 49.18

4. Articles 49 and 145.—It follows from the discussion in Note 2 ante that the words "moveable property" in this Article mean, with reference to the context, moveable property recoverable in specie, in other words, specific moveable property. Article 49 ante provides a period of three years for suits for "other specific moveable property or for compensation for wrongfully taking or injuring or wrongfully detaining the same." It is a general Article applicable to suits for recovery of specific moveable property and this Article is a special Article providing for suits for recovery of specific moveable property control of the property and the specific moveable property and this Article suits article 49.

^{15. (1867) 4} Bom H C R A C 155 (162), Radhaba; v. Shama.

^{16 (1870) 14} Suth W R 322 (322), Shumboo Chunder v. Pran Kristo.

^{17. (1924)} A I R 1924 Nag 12 (13) 75 Ind Cas 787, Laximichand v. Dulichand.

^{18 (1911) 12} Ind Cas 207 (208) 35 Mad 636, Gopalsamy Iyer v. Subramamya

Note 4

 ⁽¹⁹²¹⁾ A I R 1921 Cal 416 (418). 69 Ind Cas 900, Promoth Nath v. Prodymno Kumar.

Article 145 Notes

cover a particular case, the former will prevail over the latter in accordance with the general principle of interpretation of statutes that a special provision will prevail over the general.²

A somewhat different view has been expressed in Krishtappa Chetty v. Lakshim: Ammal, that Article 49 is not dealing with articles deposited in any sense at all and that therefore there is no question of that Article applying to cases falling under this Article. In Md. Habb.u.Haq v. Tham Chaula, where Government Promissory Notes were left by A with B and it appeared that they must have been so left ofther as security for the loan borrowed by A from B or for safe custody, it was held by their Lordships of the Privy Council that in either case a suit by A against B for recovery thereof would be governed by Article 145 and not by Article 49

Where this Article applies to a case, the mere fact that a demand has been made for the property and has been refused, would not take the case out of the applicability of this Article and bring it within Article 49. The contrary view expressed in the undermentioned cases is a sainst the general trend of opinion and does not seem to be correct.

5. Suit against heirs of depositary or pawnee.—In Promoth Nath Malikok v Prodynmo Kumar Mullick, Mr. Justice C. C. Ghose observed that bailments are of two kinds, voluntary and involuntary, that where A makes a doposit with B, B is a voluntary balee, that if B dies, his hear is an involuntary ballee who may also described as a "dopositary" and that suit acausat the heir would

```
    [1910] 5 Ind Cas 1 (1) 33 Mad 56, Gangmens Kondiah v. Kondappa Naidu
    (1928) A I R 1928 Rang 300 (310) 116 Ind Cas 468 6 Ring 517, Ma Shue
    On v. Maw Sau
```

- 2 (1902) 26 Bom 430 (432) 4 Bom L R 72, Narmadabas : Bhasanishankar
- 8 (1923) A I R 1923 Mad 578 (579, 589) 72 Ind Cas 642 4 (1938) A I R 1935 P C 110 (112) 173 Ind Cas 612 32 Sind L R 426
- 5 (1916) A I B 1916 Cal 869 (870) 34 Ind Cas 959, Gangahara Chakrabarta v. Nabin Chandra
 - (1921) A I R 1921 Cal 416 (418) 69 Ind Cas 900, Promoth Nath v. Prodgomuo Kumar (1921) A I R 1929 Cal 143 (144) 107 Ind Cas 473, Amesuar Karmarkar v.
 - (1929) A I 14 1929 Cal 143 (144) 107 Ind Cas 473, Ajnesuar Karmarkar v. Kailash Chandra (1931) A I R 1931 Cul 87 (90, 91) 61 Cal 119 150 Ind Cas 308, Bibbu Bhu.
 - shan v Anadi Nath [See also (1893) 1895 Bom P J 213, Ganapatram Hira Chand v Parbhidas Narsidas
 - (1907) 26 Rom 430 (432) 4 Bom L R 72, Narmadabas v. Bharansshanhar
 - (1910) 5 Ind Cas I (2) 33 Mad 56, Ganzinens Kondiah v. Kondarpa Naudu
- (1928) A I R 1928 Rang 309 (210) 116 Ind Cas 465 6 Rang 547, Ma Shue on v. Ma Saw]
- (1899) 9 Mad L Jour 51 (50), Hamakrishna Reldi v Panaya Goundan
 (1919) A I R 1919 All 102 (103) 41 All 643 55 Ind Cas 45 Kulyin Mal v. Kishen Chond.

Article 148 Notes 5-6 therefore be governed by this Article. In Bibhu Bhusan Dutta v. Anadi Nath Dutt, a Bench of the Calcutta High Court dissented from the view expressed in Promothnath's case1 that the beir of a deceased bailee is an involuntary bailee, but came to the conclusion that a suit against the beir would nevertholess he governed by Article 145. It was observed that by the death of the bailee the hailment comes to an end (Section 162 of the Contract Act), but that the character of the transaction in so far as it is a deposit is not altored, and that the person in whose hands the thing deposited comes, if it does by virtue of his succeeding to the estate of the original depositary, becomes n depositary all the same for the purposes of this Article. The High Court of Madras has held that in the case of a depositary or pawnee it cannot be said that the contract of deposit or pawn comes to an ond on the death of the depositary or pawnoo and that therefore this Article will apply to a suit against the legal representative of the depositary or paymee. Section 162 of the Contract Act was not referred to

See also the undormontioned case where the Article has been applied to suits against the legal representatives of the original denositary or nawnee.

6. Starting point.—Time, under this Article, runs from the date of the depost or pawn and the period of limitation is thirty years from that date ¹⁸ And this is so, notwithstanding a contract between the parties fixing a time before which the depositor or pawner could not recover the property from the balles ¹ The principle appears to be the same as in the case of leans of money where time runs from the date of the lean even though the lean is stated to be payable on demand. See Note 6 to Article 59 ante. Domat, in his Civil Law, states the reason of the rule as follows:

"A deposit is a covenant by which one person gives to another semething to keop which he is to restore whenever the depositor shall think fit to call for it. The deposit ought to he gratuitous, for otherwise it would be a hiring and the letting to hire where the depositary would let out his care. Since it is the nature of the deposit that the things are not deposited for the behoof of this depositary, as things lent are for the use of the horrower, but for the bare advantage of the denositor he may

Note 6

^{2. (1931)} A I B 1934 Cal 87 (92): 61 Cal 119: 150 Ind Cas 898.

 ⁽¹⁹²⁵⁾ A 1 R 1925 Mad 185 (185) . 84 Ind Cas 1026, Krishnaswami Iyengar v Gopalachariar.

 ⁽¹⁹³⁰⁾ A 1 R 1930 Lah 913 (914): 129 1nd Cas 199, Gurbakhsh Singh v. Kharasts Ram.

¹a (1872) 1872 Pun Re No. 23, Guan Chand v. Mohumda.

 ⁽¹⁹¹⁹⁾ A I R 1919 Mad 972 (985) : 40 Mad 1040 : 43 Ind Cas 31 (F B), Secti Kulti v. Kunhi Pathumma.

^{(1910) 5} Ind Cas 1 (2, 8) . 33 Mad 56, Gangment Kondiah v. Kondappa Naidu

take back the thing deposited whenever he pleases, even although the time of restitution were regulated by contract."2

Article 148 Notes 6 - 7

The reason why such a long period of thirty years has been fixed for suits for recovery of deposits and pawns, has been stated by Doyle, J., of the Rangoon High Court, as follows:

"It is significant that Section 10 of the Limitation Act does not allow limitation to he set up at all by a trustee in the case of an express trust. It is only reasonable therefore to suppose in cases like the above where there is a transaction in the nature of a trust that the law would contemplate a longer period of limitation against a wrongdoor than in cases where no trust of any kind had been established."3

7. Nature of suit must be ascertained from the plaint, -Where the plaintiff alleges in his plaint that he made a deposit with the defendant of moveable property, and the defendant's statement is a mere denial of the plaintiff's allegations, and no evidence is adduced, it is the plaintiff's allegation and averment in the plaint that should be looked to as the sole basis for considering what period of limitation is applicable to the case, and not any case that may be set up in defence 1

A suit for redemption of a pledge is a suit to "recover moveable property pawned" within the meaning of this Article 2

146. Before a Thirty years. When any part Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortgaged.

of the principal or interest was last paid on account of the mortgagedebt.

Act of 1877 Sume as above

Act of 1871

First and third columns Same as above Second column . "Sixty years "

2. Domat's Civil Law, S., C91, C92, 697, cited in 5 Ind Cas 1 (at pp. 2 and 3). 3, (1928) A I R 1928 Rang 309 (310) . 6 Rang 547 116 Ind Cas 408, Ma Shre On v. Ma Saic

Note 7

- 1 (1925) A I R 1925 Mad ISS (185) 84 Ind Cas 1026, Krishnistramy Isengar v Gopalackariar.
- 2 (1990) 15 Bom 30 (32), Kashiram Mulchard v. Hirarand Suratrana.

Article 146

Artiole 146 Notes

Synopsis

1. Legislative changes.

2. Scope and applicability of the Article.

3. Starting point of limitation.

4. Applicability of Sections 20 and 21 to suits for possession.

Other Topics

Article 135 and this Article
No payment made—Starting point of limitation
Payment by whom to be made ...

... See Note 2 ... See Note 3, Pt 4 Sec Note 3, Pt. 3 & F-N (3)

1. Legislative changes.—There was no corresponding provision to this Article in Act 14 of 1859, and suits for possession by a mortgagee were governed by Section I clause 12 of that Act, which prescribed a period of twelve years from the time the cause of action arose. By virtue of Section 6 of that Act, it was provided that with regard to suits "in the Courts established by Royal Charter by a mortgagee to recover from the mortgager the possession of the immorable property mortgaged, the cause of action shall be deemed to have arisen from the latest date at which any portion of principal money or interest was paid on account of such mortgage-debt."

Article 149 of Act 9 of 1871, corresponding to this Article, prescribed a period of sixty years. The sixty years' period was reduced to thirty years under Article 147 of Act 15 of 1877, the language of which was similar to this Article.

- 2. Scope and applicability of the Article.—The Article deals withouts for possession by a mortgagee hefore a Court established by Hoyal Charter in the exercise of its ordinary original civil jurisdiction. Article 135 supra, deals with such saits in Courts not established by Royal Charter. Unlike Article 135, this Article is restricted to suits for recovery of possession from the mortgagor.\(^1\)
- 3. Starting point of limitation.—The starting point of limitation under this Article is the date when any part of the principal or interest was last paid on account of the mortgage-debt, and not the date of payment fixed in the mortgage deed or the date of default in making payment. Referring to this exceptional provision in the

Act of 1859, Section 1 clause 12 and Section 6.

Limitation of To suits for the recovery of immoveable property or of tuelte years Suits any interest in immoveable property to which no other provision of this Act applies—the period of twelve years from the time the cause of action arose.

Computation of period of limitation in suits in Supreme Courts by mortgages to recover immoreable property mortgaged.

6 In suits in the Courts established by Royal Charter by a mortgage to recover from the mortgagor the possession of the immoveable property mortgaged, the cause of action shall be deemed to have arisen from the latest date at which any portion of principal money or interest was wait on account of such mortgage debt.

Article 145 - Note 2

 See (1886) 12 Cal 614 (618, 619), Shurnomoyee Dass v. Srinath Das. Nate 3

(1887) 14 Cal 464 (482). 11 Ind Jur 414, Lutchmiput Singh v. Land Morigage Bank of India Ltd

Article 146 Note 3

corresponding Section 6 of Act 14 of 1859, their Lordships of the Judicial Committee observed as follows:

"It may, however, have been deemed necessary to introduce the exception stated above, in order to put mortgages in the English form, when put in suit in the Supreme Court which was generally governed by English law, upon the same footing as that in which English mortgages are under the existing Statutes of Limitation, and their Lordships dealing with suits upon mortgages in the ordinary Courts in India, might, in the simple case of a mortgagee and his mortgager pennutted to remain in possession so long as he paid interest, have found ground for considering that there was a permissive possession, and that a new cause of action and right of entry accrued when that permission ceased **3

The third column speaks of payment of interest or principal on account of the mortgage debt but does not specify as to who should make the payment In Levin v Wilson, the Judicial Committee in construing Section 30 of Capita 84 of the Consolidated Statutes of New Brunswick, the language of which was similar to this Article with regard to the etarting point of Innitation, observed as follows "The principle established by authority is, that the only person by whom a payment can be made to stay the currency of the Statute, is the mortgagor, or some person in privity of estate with him,

2. (1871) 16 Suth W R P C 33 (3t, 35) 14 Moo Ind App 144 8 Beng L R 104 2 Suther 480 2 Sur 711 (P C), Brojonath Koondoo Choudhry v Khelut Chunder Ghose

3. (1896) 11 App Cas 639 (646, 647) 55 L J P C 75 55 L T 410

See also the following English caus

(1881-82) 90 W R (1 mg) 327 (329) 51 L J Ch 391 19 Ch D 539 46 L T 350, Harlock v lebberry (Payment of eart to Lenant of the proregiger to the mortgage is not plyment of interest or principal for the mortgage)

(1885 86) 34 W R (Ung) 690 (691) 55 L J Ch 783 14 App Cas 423 51 L T 814, Newbould v Smith (Payment of inferest by invelgagor after be had parted with equity of redemption held insufficient to keep alive the mortgage)

(1864) 145 R R 79 [84, 85] 11 H L C 115 10 Jur [8 8] 885 11 L F [8 8] 93 13 W R 20 4 N R 520, Chinurery Learn (V parment by a receiver appointed at the instance of the mortgage our several mortgaged extites was hid to be sufficient though in point of fact the receiver hid only been in possession of our of those exities).

(1898 89) 37 W R (Eng) Dag C sl 111 (112) Burglay a Onen (Held, parament of interest to the elementatur of more 150 a state prevents the property of burglayers.

running of limitation)
(1883 90) 35 W. R (ling) 55 L.J.Ch 94 43 Ch D 104 61 L.T. 632,
In refrishy dilinems. Presby (Payment by suret.)

(1879-80) 29 W.R. (Ling) 904 (207) Heath's Pugh (Hell after the institution of suit for foreclosure time conseltorium against the mortgagesplinitiffs, and the effect of the dense for factionic was to give the plinitiffs in undeficially right to procession.)

(1894-95) 43 W R (Rug) 827 (328) 1 Ch 213 b4 LJ Ch 184 71 L T 755 13 R 75, Kabble v Faurthorne

(1897.98) 46 W R (Fug) 56 (52) 66 L J Q B 705 (1897) L R 2 Q B 143 77 L T 88, Thornton v. France

Article 146 Notes 3 —4

or the agent of one of them. It will have been seen that their Lordships think it necessary to qualify that doctrine." Their Lordships eventually held that. "In this case their Lordships think it sufficient to say that payments made by a person who under the terms of the contract is entitled to make a tender, and from whom the mortgagee is bound to accept a tender of money for the deleasance or redemption of the mortgage, are payments which by Section 30 give a new starting point for the lapse of time?

The third column of this Article assumes or presupposes a payment for interest or principal on account of the mortgage-debt. But supposing there is no such payment at all, when does limitation start in a suit for possession by the mortgagee? The High Court of Bombay* characterized the language used by the Legislature in the third column as being "very awkward and defective." In the case cited below, Garth, C J., observed;

"If it were necessary for us in this case to put a construction upon that Article, I should be much disposed to hold that it is applicable to those cases only where some part of the principal or interest bas been paid, and that in other cases the ordinary twelve years' limitation would apply. In cases where any participal could be proved, the presumption that would arise from lapse of time (which is the principle upon which all Limitation Acts are founded) would not arise, or at any rate it would not be nearly so strong as in a case where no part-payment had been made. And this might in some degree explain the extraordinary length of time which is allowed to a mortgage under Article 149."

In the same case, Markhy, J., pointed out :

"This would seem as it the clause only applied to transactions "where something had been paid, principal or interest; and there may be a good reason for this, for where some part of the principal and interest has been paid, there is not likely to be any dispute as to the original transaction, of which the payment operates as an acknowledgment."

4. Applicability of Sections 20 and 21 to suits for possession.—Sections 20 and 21 of the Act apply only to suits for recovery of debts, and not to suits for recovery of possession. See Note 4 to Section 20 ands. and also the undermentioned case.

^{4 (1877) 3} Bom 312 (339, 332), Ganpat Pandurang v. Adarji Dadabhai (Sult for forcelesure—Held, whether Article 132 or Article 149 of Act 9 of 1871 applied, the suit having been filed within twelve years from date of mortfage is not barred)

 ^{(1879) 4} Cal 283 (296, 303) 3 Cal L R 336, Ram Chunder Ghosaul v. Jujgut Monmohiney Dabee

Note 4

 ^{(1903) 25} AH 167 (170, 171) . 1903 AH W N 223, Anwar Husam v. Lalmir Khan.

Article 146 A

146A.* By or on Thirty years. The date of the behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.

dispossession or discontinuance.

Sunopsis

- 1. Legislative changes.
- 2. Scope of the Article.
- 3. "By or on behalf of any local authority."
- 4. "Public street or road."
- 5. "Dispossessed or of which it has discontinued the possession."
- 6. Effect of bar of suit by explry of period prescribed by this Article.

Other Topics

Applicability of Article-Essentials See Note 2 Suit barred by limitation-Whether local authority can proceed under

Municipal statute See Note G , Pts 8 to 6 Suit by or on behalf of Local Government-Article not applicable

See Note 8, Pt 2 Suit by private person-Article not applicable See Note 3. Pt I Built for possession of Crown lands entrusted to local authority-Article See Note 4, Pt 7 not applicable

- 1. Legislative changes .- This Article was first introduced in the Act of 1877 by Act XI of 1900. Prior thereto, suits contemplated by this Article were held governed by the twelve years' period of limitation.1
- 2. Scope of the Article.—This Article applies to suits by or on behalf of any local authority for the possession of a public street or road from which it has been dispossessed or of which it has discontinued the possession. In order therefore that this Article may apply, it is necessary that -
 - 1 The suit must be by or on behalf of any local authority. See Note 3 helow

Act of 1877 Sure is als te

Note - This Article was added to the Act of 1877 by Act XI of 1900.

Article 146 A - Note 1

1 (1916) A I R 1916 Mad (13 (c14) 17 Ind c to 1' > (100) So Mad C. Essereswaraswans v Lillary Memorpal Courses

Article 146 A Notes 2-4

- 2. It must be one for possession.
- The subject-matter of the suit must be a public street or road or any part thereof. See Note 4 below.
- The local anthority must have been dispossessed of such street or road or must have discontinued possession thereof. See Note 5 below.
- 3. "By or on behalf of any local authority."—This Article applies only to suits by or on behalf of any local authority. It does not apply to a suit for ejectment by a private person against another in respect of a specified field, although the field has been recorded as part of a thoroughfare and shamilat.-ideh 'Nor does it apply to suits by or on behalf of the Local Government. In Basaiesicarasimani v. Bellary Municipal Council, where a suit was filed against the Municipality as well as the Local Government for a declaration of ownership regarding a pial put up over a drain, it was held that although the plaintiff and established title by prescription as against the Municipality by reason of his possession for over thirty years, and the plaintiff had acquired no title by prescription against the Government, the plaintiff had acquired no title by prescription against the Government because he had not been in possession for sixty years.
- 4. "Public street or road." A "road" is a general term meaning a way or a passage 1 A public road is a road which the public has a right to use. A "street" is a town or village road that has houses on one side or both of it, and a public street is a street which the public has a right to use.

The word "road" is not confined to the portion actually used by the public, but extends also to side lands which are kept as parts of the road for the purposes of the road though they may not be actually used by the public. A too narrow construction cannot be put upon the expression "public street or road" in this Article, as it is intended to safeguard the interests of public bodies which are not expected to be as vigilant over their rights as private individuals.

"Street" includes the drains or ditches on either side thereof.4

Note 3

 ^{(1912) 15} Ind Cas 285 (286): 1912 Pun Re No. 124, Achar Singh v. Badhawa Singh (Held, Article 120 applies.)
 (1916) At R 1916 Mad 613 (615, 617) 39 Mad 6 · 17 Ind Cas 158.

^{2 (1916)} A 1 R 1916 Mad 613 (615, 617) 33 Mad 6 · 17 Ind (

^{1.} Wharton's Law Lexicon.

² Concise Oxford Dictionary.

^{3. (1928)} A I R 1923 Cal 485 (487) 112 Ind Cas 24, Anukul Chandra v. Dacca District Board.

[[]See also [1890] 17 Cal 684 (685), Ram Chandra Chose v. Bally Municipality ("Boad" in cl 5 of S. 217 of Bengal Act III of 1884 is not limited to roads vested in the Municipal Commissioners but include paths over which the public have a right of way II

⁴ See the definition of "Public Street" in Section 3 of the Madras District Municipalities Act, 5 of 1920.

As to what is sufficient evidence to establish that n road is a public road, see the undermentioned cases.5

Article 146 A Notes 4-5

The Article applies only to suits for the possession of any public street or road It does not apply to suits for possession of other property 6 Thus, it does not apply to a suit for possession of Crown lands entrusted to the local authority for management 7 But the Article is not restricted to emits for possession of streets or roads formed by the local authority on lands belonging to or acquired by it in proprietary right. In Sundaram Iyer v. Municipal Council of Madura, 8 Mr. Justice Bhashyam Iyengar observed as follows .

"I do not think that the new Article (146 A) can be reasonably restricted to streets or roads formed by the Municipality on lands belonging to or acquired by it in proprietary right. The operation of Section 28 of the Limitation Act (XV of 1877) ppon this new Article will be to extinguish the right of highway on the expiration of thirty years from the date of dispossession of the Municipality by encroachment and thus free the land from the burden of the highway, if the person encroaching upon the highway be the owner of the land. If the owner of the land on which the highway exists be a third party, an encroachment of a permanent character on the public highway will also, as a general rule, operate as occupation of the soil and dispossession of the owner of the soil equally with the Municipality, and his ownersbin will be extinguished in favour of the trespasser at the expiration of the ordinary period of limitation, 212., 12 years, and at the expiration of 30 years the ownership thus acquired by tho wrongdoer will be freed from the burden of the highway. But, if the highway has been dedicated to the public by the Crown, the right of the Crown as owner of the land can be extinguished only at the expiration of sixty years' adverse possession or occupation by the trespasser "

5, "Dispossessed or of which it has discontinued the possession." -- See Notes to Article 142, ante

⁽But see (1901) 28 Mad 17 (18) 1 West 916, Venkatarama Chetty v Emperor (A case decided under Madras Act III of 1889-Not correct law in view of the definition in Section 3 of the present Act V of 1920)]

^{5 (}ISSO) 6 Cal L R 282 (284), .inderson v Juggodumba Dabi

adan v

Apparent Anna 11. Marine mere-all to commune a majaway discussed)

^{(1898) 1898} I'un Re No 62, Rana Ganpat Singh v Kangra Valley Sta's Company (Principles of English law, how far applicable to Indian highways discussed)

^{6,} See (1930) A 1 R 1930 Mad (79 (th) 125 Ind Cas 545, Secretary of State v. District Board of Tangore 7 (1934) A I R 1934 Lah 900 (961) 153 Ind Cas 964, Labba Singh v.

Municipal Committee, Americar.

^{8. (1902) 25} Mad 635 (650) 12 Mad L Jour St.

Article 146 A Notes 5—6 In Arunachalla v. Municipal Council of Mayavaram, where the question arose as to whether the plaintiff had dispossessed the Municipality of the drains on the sides of a public street and acquired an indefeasible right as against it, the High Court of Madras observed as follows:

"The plaintiffs can acquire adverse title against the Municipality only if they did any acts by which the Municipality were prevented from onjoying the drains as drains. The Municipality's possession and enjoyment consisted principally in the water of the street falling into and being carried off by the drains unless the enjoyment of the drain by the Municipality as a drain is prevented, there could be no adverse possession. The more fact that the Municipality did not repair the drains or that the plaintiffs have been repairing or looking after the drains cannot prevent the enjoyment by the Municipality of the drains as drains so long as they are carrying off the street rain water and hence no adverse no session has been satablehed."

6. Effect of har of suit by expiry of period prescribed by this Article.-The etreets in municipal towns are vested in the Municipalities by Government for purposes for which they were constituted. The right of the Municipality over the street is not a mere right of easement; the street itself as well as the soil thereof is vested in the Municipality in trust for the public. The Municipality cannot give up the rights of the public in the street or affect their rights hy any act of their own, but this will not affect the capacity of a person in hostile possession to acquire rights which would affect the public. Thus, where the owner of a house abutting a street constructs a pial over a portion of the street and is in hostile possession for a period of more than thirty years, a suit by the Municinality for possession of the space covered by the pial would be harred under this Article, and by the operation of Section 28 ante, the rights of the Municipality to such space will be extinguished in favour of the trespasser. Similarly, where a person huilt a rowak or platform upon a portion of a street vested in the Municipality and was using it as an integral part of his building for over fifty years before suit, it was held that the right of the Municipality to that nortion of the street or drain which was occupied by the wall of the rowal was extinguished. It was also pointed out that the erection of the rowak was not a continuing wrong as contemplated by Section 23 of the Act but that the injury was complete on the erection of the rowak.2

Note B

Nots 6

^{1. (1920)} A I R 1920 Mad 193 (194) : 55 Ind Cas 493.

^{1. (1895) 19} Mad 151 (157). Municipal Commissioners, Madras v. Sarangapani Mudahar.

 ⁽¹⁹¹⁹⁾ AIR 1919 Cal 807 (808): 49 Ind Cas 93, Ashulosh Sadhukhan v. Corporation of Calcutta.

Under various local Acts, e.g., the Bombay District Municipal Act, 1901 (Section 122) and the Madras District Municipalities Act. 1920 (Section 182), the local anthority is authorized to remove encroachments made by persons on public streets and roads. There is a difference of oninion as to whether, after a suit for possession of a public street or road is harred by limitation under this Article, the local authority can remove the encroachments under the power given to it by the statute. According to the High Court of Bombay, the local authority cannot remove the encreachment, as the encreached portion ceased, after the expiry of the period prescribed by this Article, to be a public street or road.3 The High Courts of Madras4 and Labore and the Judicial Commissioner's Court of Sunds have. on the other hand, held that the right of the local authority to remove the encroachment is not affected by the fact that the title of the local authority to the space occupied by the encroachment might have been extinguished by the bar under this Article.

PART X - Sixty years.

147. By a	Sixty years.	When the	money
mortgagee for		secured	by the
mortgagee for foreclosure or		mortgage	becomes
sale.		due.	

Act of 1877 Same as above,

Acts of 1871 and 1859
See Note 1 " History and . . " above Clause 12, Section I of the Act of 1859 provided .

To suits for the recovery of immoveable property or of any interest in immoveable property to which no other provision of this Act applies—the period of twelve years from the time the cause of action arose.

3 (1922) A T R 1922 Bom III (112) 64 Ind Cas 202 . 46 Bom 335, Abaja Bagho v. Municipality of Jalgaon

(1920) A I'H 1920 Born 9 (9, 10) 58 Ind Cas 326, Tayabali 'Abdullabha: v Dohal Municipality

4 (191: ' 161) 33 Mad 6,

(1925) A I R 1925 Mad G (65, 66) 47 Mrd 716 81 Ind Crs 894 25 Crt L Jour 1970, Public Prosecutor v Varadarajalu Naulu (Distinguishing 20 Ind Crs 956)

 (1936) A I R 1936 Lah 182 (182)
 159 Ind Cas 639, Municipal Committee, Amritary Mt Gujrs (4 I R 1922 Bom 111, Not followed, and AI R 1925 Mad 64, Pollowed)

 (1935) A. I. R. 1935 Sind 222 (122) 1935 Cri Cas 1253 57 Cri L. Jour 52 150 Ind Cas 247, Durlaby Hanway v. Municipal Corporation. Karachi (Case under Section 195 of harseli Cri Municipal Act, 1933)

[See however (1915) i I R 1915 Sind 4 (7) 50 Ind Cts 13 9 Sind LR 1, Karachi Municipalité v Shario Ladha (Hed. as pluntil has acquired a prescriptive title the lared is his private property and S 122 (2) of the Municipal Act does not help the Municipal Act does not help the Municipal (1). Article 146 A Note 6

Article 147

Article 147 Note 1

Synopsis

- 1. History and scope of the Article.
- Applicability of Article to mortgages by deposit of title deeds.
- 3. "Mortgagee."
- 4. Starting point.

Other Topics

Anomalous mortgage See Note 1, Pt. 14 & F-N (6) Article confined to suits for foreclosure or sale in the alternative ... See Note 1 Pt. 11, Note 8, ... Article 132 and this Article See Notes 1, 4 English mortgages-Applicability of Article after amendment of T. P. Act, Section 67 ... See Note 1, Pt. 14 . . Mortgage by conditional sale ... See Note 1, Pt. 2 and F.N (2), (6) Usufructuary mortgage See Note 1, F-N (6)

1. History and scope of the Article. — There was no provision corresponding to this Article in the Act of 1859 and a suit to enforce a mortgage, whether simple, or by conditional sale, or by deposit of title deeds, was held to be one for the recovery of an interest in immovable property governed by the twelve years' rule in clause 12 of Section 1 of that Act.

The Act of 1871 introduced Article 183 providing for suits "for money charged upon immoveable property." There was no provision corresponding to this Article. It was held in cases arising under that Act that a suit to recover money in enforcement of a mortgage or charge was governed by Article 132 * It was even held in some cases that a suit for a mere personal decree for money charged upon

Article 147 - Note 1

- (1875) 1 Cal 163 (167): 25 Suth W R 84 · 3 Ind App 1: 5 Suther 222: 3 Sar 581 (P Cl. Juneshwar Dass v. Mahabeer Sungh.
 - (1868) 9 Suth W R 170 (174) · Beng L R Sup Vol 879, Surwan Hossem v. Shahajadah Gulam Muhammad.
 - (1868) 10 Suth W R 379 (379). 9 Bong L R 175n, Munnoo Lall v. T. W. Pigue.
 - (1864) 2 Mad H C R 51 (54), Chetts Goundan v. Sundaram Pillas.

..

Tachapa Sugaya.
Mutlammal.

isuamy v. Basireddy Konda-

- (1885) 12 Cai 614 (616, 619, 620) · 10 Ind Juc 458, Shurnomoyee Dan v. Shrinath Das (Mortgages in English form between Hindus in the mollisal of Bengal were held to be enforceable only as mortgages by conditional
 - (1878) 4 Cal 283 (302) r 3 Cal L R 336 2 Shome L R 2, Ram Chunder Ghosaul v Juggutmonmohiney Dabee
- (1888) 11 All 144 (147) 1889 All W N 41, Murlidhar v. Kanchan Singh.
 3. (1868) 10 Suth W R 56 (57), Pearce Mahun Boss v. Gobind Chunder Addy-
- (1884) 7 All 502 (506) · 12 Ind App 12 . 3 Ind Jun 160 : 4 San 619 (P C), Ram Din v. Kalka Prasud.
 - (1877) 3 Bom 312 (332), Ganpat Pandurana v. Adors Dadabhas.

Article 147 Note 1

property."5 The Act of 1877 introduced a slight modification in Article 132 by the substitution of the words "to enforce payment of money charged upon immoveable property" for the words "for money charged upon immoveable property" which occurred before. It also introduced a new provision corresponding to the present Article 147 providing a period of sixty years for suits "by a mortgagee for foreclosure or sale." The introduction of this Article gave rise to a considerable conflict of opinion. According to one series of decisions, this Articlo applied to suits for sale or for foreclosure in respect of mortgages and Article 132 applied to suits in respect of charges not amounting . to mortgages. It was further held in some cases that a suit for a mere personal decree for money charged on ammevable property would also be governed by Article 132 notwithstanding the change introduced in that Article 7 According to another series of decisions. this Article applied only to cases where the mortgagoo sued for sale or foreclosure in the alternative and Article 132 would apply to all other suits to enforce a mortgago or a charge 8 The leading caso expressing this view was the decision of the Calcutta High Court in

5. (1882) 6 Bom 719 (723) (F B), Lallubhas v. Naran.

6. See cases cited in Foot-Note 3 to Note 2 to Article 132, ante (See also (1895) 17 All 483 (485) 1895 All W N 110. Ram Raign v.

Lalta Prasad. (1907) 29 All 544 (552, 553) * 1907 All W N 159 . 4 All L Jour 424, Ram Singh v. Sobha Ram. (Suit based on pious obligation of sons and grandsons)

(1888) 1888 All W N 200 (200), Radho v Umar Daras Khan

(1886) 1886 All W N 212 (213), Jugal Rishore : Ram Sahai.

(Anomalous mortgage-Simple usufructuary mortgage)

(1886) 10 Bom 592 (505), Gobind Bhaichand v Kalnak (1884) 1881 Bom P J 29, Mahableshuarbhat v Ratnabas

(1891) 1891 Bom P J 16, Firm known as Nonge v Pandu

(1891) 1891 Bom P J 35, Barars Nerapa v Tatya Jayara.

(1900) 27 Cal 185 (186, 187), Aman Ali v. Argar Ali Mia. (Barred after twelve years.)

(1893) 16 Mad 64 (65, 66) 2 Mad L Jonr 155, Ammanna v Guru-murihs. (Mortgage by conditional sale—Sunt for foreclosure) (1896) 19 Mad 411 (414) 6 Mad L. Jour 210, Udayana Pillas v Senths-

telu Pillas (Usufructuary mortgage containing covenant to pay.) (1906) 16 Mad L Jour 53 (54), Chairman, Municipal Council, Rajah-

mundry v Venhatestaralu

(1885) 1885 Pun Re No 19, Gujar Mal v Haichs Eam

(1888) 1888 Pun Re No. 115, Karım Balhish v. Mt. Amar Dett.)

Instatrat

Ach) ru Mal

The above cases are no longer law

[See (1885) 7 All 502 (506) 12 Ind App 12 4 Sar 619 (P.C), Ram Din v. Kalka Pravad]

8 See the cases cited in Pool Note 4 to Note 2 to Article 172, and (See also (1890) 1890 Pun Re No 112(F E), Para Saran Dass v. Mehial.)

Girwar Singh v. Thakur Narain Singh.9 where it was observed that the object of introducing Article 147 was to provide for cases where reliefs of foreclosure or sale in the alternative could be claimed and for which there was some uncertainty felt before as to the provision applicable. A third view was expressed in some cases that, with regard to hypothecations of immovable property made before the coming into force of the Transfer of Property Act, 1882, Article 132 nf the Act of 1877 applied and not Article 147, whatever might be the position with regard to murtgages created after the coming into force of the Transfer of Property Act, 1882. The view proceeded on the ground that in such cases there was only a charge and not a mortgage as defined in the Transfer of Property Act, 10 This conflict has now been set at rest by the decision of their Lordships of the Privy Council in Vasudeva Mudaliar v. Srinivasa Pillai,11 to the effect that this Article is confined to that class of mortgages in which the suit may be, and in fact always is, brought for foreclosure or sale in the alternative and that suits in respect of all other mortgages. are governed by Article 132. Their Lordships observed as follows :

"The previous Act was Act 9 of 1871, in which Article 132, referring to suits 'Ior money charged upon immoveable property,' was practically the same as the present Article hearing that number. There was nothing corresponding to Article 147. Under that state of things it was perfectly settled law that suits of the present class (i. e. suits on simple mortgage) were governed by Article 132, whilst come uncertainty had been felt as to the rule of limitation applicable to aunther class of mortgages, the English mortsage.

"The twn views taken under the Act of 1877 are these. According to one view, Article 147 applies to every suit by a mortgagee, in which he asks either for foreclosure or for sale. According to the other view, Article 147 applies only to the class of mortgages (English martgages) in which the suit may be, and in fact always is, brought for 'foreclosure or sale', while Article 132 means what the corresponding Article meant before.

"The narrnwer construction escapes the necessity of attributing to the Legislature a great and sudden change of policy. It also gives effect in the nrdinary presumption that the Legislature, when it repeats, in substance in a later Act, an earlier enactment that has inhained a settled meaning by judicial construction, intends the words to mean what they meant before. The other construction falls in both these particulars."

^{9. (1887) 14} Cal 730 (740) (F B).

[[]See also (1890) 1890 Pun Re No 112 (FB), Ram Saran Dass v. Mehlab]

10. See the cases cited in Foot-Noot 5 to Note 2 to Article 182, ante.

 ^{(1907) 30} Mad 425 (483, 484). 34 Ind App 196 · 4 All L Jour 625 : 9 Bom-LL R 1104 : 11 Cal W N 1905 : 6 Cal L Jour 879 : 17 Mad L Jour 444 : 2 Mad L Time 333 (PO).

Artiole 147 Notes 1—2

After the said decision of the Privy Council it has now been held that Article 147 applies only to mortgages, such as the English mortgage, in which the suit is for forcelosure or sale in the alternative¹² and that Article 132 applies to all other suits to enforce mortgages.

By Act 20 of 1929, Section 67 of the Transfer of Property Act, 1882, has been amended, the result of which is that a mortgage under an English mortgage is not ontitled to ask for foreclosure, but can only sue for sale. It would follow that, after the coming into force of the amendment, Article 147 can have no application to English mortgages in Provinces to which the Transfer of Property Act applies. The Article would apply only in English mortgages in Provinces to which the Transfer of Property Act does not apply, and perhaps to anomalous mortgages which provides for the remedies of foreclosure or sale. ¹⁸

2. Applicability of Article to mortgages by deposit of title deeds. —Before the Transfer of Property Act, 1882, was amended by Act 20 of 1929, there was a difference of opinion as to the romedies available to a mortgages by deposit of title deeds. The conflict across by reason of the fact that Section 67 of the Transfer of Proporty Act, 1932, which specified the remodies of various mortgages did not specifically make any reference to mortgages hy deposit of title deeds, though such mortgages were recognized by Section 59 of that Act. According to the High Court of Bombay, a mortgages by deposit of title deeds was entitled to both the romedies of forcolosure and sale.¹ According to the Calcutta³ and Madras³ High Courts, the remody was only a sut for sale. This conflict has been sot at rest by the amondment of Sections 58 and 67 of the Transfer

^{12. (1924)} A I R 1924 Mad 736 (787) 82 Ind Cas 399, A I. Campbell v Audilestralu

 ⁽¹⁹²⁴⁾ A I R 1924 Mad 736 (737) 82 Ind Cas 339, A I. Campbell v Audi-Lesatalu

⁽¹⁹¹⁷⁾ A I R 1917 Mad 292 (293) · 34 Ind Cas 475, Ramayya v. Seshayya

⁽¹⁹³¹⁾ A I R 1931 Mad 542 (549) 133 Ind Cas 497, Chandramma v Gunna Seethan

⁽¹⁹²⁶⁾ A I R 1926 All 493 (494, 496) 48 All 502 94 Ind Cas 619, Sheoram Singh v Enbu Singh. (Mortgige by conditional sale) (1926) A I R 1926 All 551 (552) 95 Ind Gas 100, Khan Sohai v Mahurman.

⁽¹⁹²⁰⁾ A I R 1926 An 331 (332) 35 Ind Cas 100, Runa Sanat V Hangruin. (Usufructuary mortgage) (1922) A I R 1922 Lah 39 (39) 3 Lah 233 69 Ind Cas 419, Utlam Chand v.

⁽¹⁹²²⁾ A I R 1922 Lah 39 (39) S Lah 233 G9 Ind C35 419, Unam Chana v. Mt. Thakar Devi 14. Sco (1938) A I R 1933 Nag 112 (113) I L R (1933) Nag 91. Bhaywantrao

Anandrao v. Damodar Gotsudrao. Nute 2

 ^{(1890) 14} Rom 269 (278), Manelys Frangs v Eustenys Naserwanys Miscre-(1877) 3 Rom 312 (830 to 332), Gampat Pandurang v Adarys Dalabhas. (1807) 22 Dom 164 (160), Khushal Sadishte v Panamekand Jurupys.

^{2. (1897) 24} Cal 348 (350) 1 Cal W N 225, Sranath Roy v Godadhur Das.

^{3. (1897) 21} Mad 326 (F B). Ramachandra Rayugaru v. Medhu Fadha

Article 147 Notes 2-4 of Proporty Act, 1882, under which a mortgaged by deposit of title deeds has only the remedy of sale of the mortgaged property and not of forcelesure. It follows from what has been said in Note 1 ante that a suit to enforce an equitable mortgage is not within this Articlo.

- 3. "Mortgagee." The word "mortgagee" will include all persons deriving title under him. This is made clear by Section 59A of the Transfer of Property Act, 1882, which, however, only gives legislative recognition to what was before recognized as the law. In view of the discussion in Note 1 ante, it is clear that the word "mortgage" in this Article refers only to the case of a mortgage in which a suit can lie for foreclosure or sale in the alternative.
- 4. Starting point. Time, under this Article, runs from the date when the 'noney secured by the mortgage becomes due." The starting point is the same as that in Article 133 ante, the only difference being that the period of limitation is, under Article 132, twelve years from that date, and, under this Article, sixty years from that date.

As to when the money "becomes due," see generally Note 23 to Article 132, ante.

Article 148

148.* Against a mortgagee to redeem or to recover possession of immoveable property mortgaged.

When the right to redeem or to recover possession

necrues:
Provided that all
claims to redeem
arising under instruments of mortgage of immoveable
property situate in
Lower Burma
which had been
oxecuted beforethe
first day of May
1863 shall be governed by the rules

of limitation in force in that province immediately before the same

dav.

Act of 1877

Synopsis

Article 148

- 1. Legislative changes.
- ia. Scope.
- 2. "Mortgagee."
 - 3. Redeeming co-mortgagor, position of.
 - 4. Adverse possession by mortgagee against mortgagor.
 - Invalid transfer of equity of redemption to mortgagee
 Effect.
 - 6. Invalid foreclosure proceedings Effect.
 - Mortgage providing that on default of mortgagor in paying the mortgage money within a fixed term, he should become absolute owner of the property — Effect
 - Mortgages purchasing the mortgaged property in contravention of Order 34 Rule 14, Civil Procedura Code.
 - Yold mortgage—Person entering into possession under such mortgage.
 - 10. Extinction of mortgage by decree or order of Conrt.
 - Effect of proceedings under Bengal Regulation, 17 of 1806.
 - 12. Abandonment of land by mortgagor.
 - 13. Adverse possession by strangers.

Staty years

Act of 1871

148. — Against a mortgagee to recover possession of immo veable property mortageed.

The date of the mortguge, unless where an acknowledgment of the trite of the mortgager or of his right of redemption has, before the expiration of the prescribed period, been nade in writing agond by the mortgager or some person claiming under him, and, in such ease,

the date of the acknowledgment. Provided that all claims to redeem, and ing under instruments of mortigue of immoveable property situate in British Barma, which have been exceuted tefore the first day of Way 1853 shall be governed by the rules of limitation in force in that Province immediately before the same day.

Act of 1859

Section 1, clime 15—To suits against a depositary, pawnee or mortgage of in repetity moreable or immorate, for the same against greater secretify of the same—a period of thirty visus if the depositary, parents or mortgage, or if in the meantume an action of the title of the depositor, pawns or mr.

gagor, or of his right of redemption shall have been given in wining symbol by the depositary, pawned or mortgaged of some person claiming under him, from the dute of such acknowledgment in writing

rtiole 148 Note 1

- 14. "To redeem or to recover possession." 15. Claim for snrplna profits - Limitation.
 - 16. Accessions to mortdaged property.
- 17. "Immoveable property."
- 15. Starting point of limitation.
- 19. This Article and Article 134.
- 20. This Article and Article 126.
- 21. Suit by puisne mortgagee for redemption of prior mortgage.
- 22. Suit by execution purchaser of equity of redemption.
- 23. Burden of proof.
- 24. Laches of mortgagor.
- 25. Effect of bar of limitation.
- 26. Special or local law.
- 27. Punjab Redemption of Mortgages Act, 2 of 1913-Dismissal of application for redemption under - Effect.

Other Topics

... Bes Nots 2, Pt. 8 Article applies to all mortgages Co-mortgagee redeeming another co-mortgagee—His possession is not adverse ... Bee Note 4 F N (8) Decree for redemption passed-Second sust for redemption ... See Note 10, Pt. 1

pee Note Io, rt. b

No date fixed for payment in mortgage deed-Right to redeem accrues imme-... See Note 18, Pt. 5 diately on execution of deed ••• ... Suit against redeeming co-mortgagor-Starting point of limitation Sea Note B, Pts. 6, 7 Suit to redeem usufructuary mortgage ... See Note 1s, Pt. 1, Note 2 F N (3)

1. Legislative obanges.

 Before the Act of 1859, there was no provision prescribing any period of limitation for a suit to redeem or to recover possession of mortgaged property.1

2. Section I clause 15 of the Act of 1859 provided a period of sixty years for a suit against a mortgagee of immovable property for the recovery of the property.2 There was a similar provision in

Article 148 - Note 1

 (1900) 27 Cal 1004 (1010) 27 Ind App 103: 4 Cal W N 565: 7 Sar 718 (P C), Fatimatulnsssa Begum v. Sunder Das. (1865) 2 Mad H O R 382 (383), Purushotam Nambudrs v. Kunju Menevan.

(1925) A 1 R 1925 Lah 105 (106) . 78 Ind Cas 368, Shahadat v. Ganesh Das. (1894) 1894 All W N 87 (87). Jamna Prasad v. Golla. [See (1863) 1 Mad H O R 146 (147), Pudsyakorslagalla v. Kadinni. (1909) 2 Ind Cas 469 (470) (Bom), Hyralal Icchalal v. Narsilal.]

2. See the following decisions bearing on the above provision: (1867) 5 Bom H C R (AC) 176 (179), Ahiloj: Khandoj: v. Dongar Harschand. Article 148 of the Act of 1871. The chief points of difference between the above provisions and the corresponding provisions in the Acts of 1877 and 1998 are as follows:

- (a) The provisions in the Acts of 1859 and 1871 only applied to suits for possession of the mortgaged property and did not apply to suits for reiemption where possession was not asked for. But the Articles in the later enactments apply to both kinds of suits.
- (h) Under the Acts of 1859 and 1871, the period of limitation hegan to run from the date of the mortgage, whereas under the Acts of 1877 and 1998, the starting point of limitation is the time when the right to redeem or to recover possession accrued.
- (c) Section 1, clause 15 of the Act of 1859 and Article 148 of the Act of 1871 contained within themselves provisions as to the computation of a fresh period of limitation in case of an acknowledgment of liability by the mortgages. But in the Acts of 1877 and 1903, such provisions were emitted, and at the same time the scope of Section 19 (which previously applied only to debts and legacies) was enlarged so as to include suits for redemption of mortgages. (See Note 16 to Section 19.)
- 3. The present Article is merely a reproduction of Article 148 of the Act of 1877 with this difference that the words "British Burma" in the third column of the Article in the prior enactment have been replaced by the words "Lower Burma"
 - (1871) 3 N W P H C R 119 (120), Mahomed Abdul Russal v. Amf Ali Shah.
 (1867) 2 Ages 227 (227), Chuztoo Singh v. Natir Hossein
- (1873) 13 Reng L R 177 (179, 180, 181) 2 Suther 897. 20 Suth W R 375 (P C), Luchmes Buksh Roy v. Rungeet Ram Pandey.
- (1900) 27 Cal 1001 (1010, 1011) 27 Ind App 103 4 Cal W N 505 7 Sac 718 (P C), Fatimatulnissa Begum v. Sundar Dos.
- (1869) 9 Suth W R 187 (189) Beng L R Sup Vol. 901 (F B), Lall Doss v. Jamal Als.
- (1869) 10 Suth W R 478 (180, 492), Runjjet Narain Sinjh v Shurfooniis. (1882) 5 Mad 182 (184), Muhlani v Manan
- 3. (1894) G All 551 (557, 558) 1881 All W N 193 (F B), Shib Lal v Ganga Prasad
 - (1881) 1881 Bom P J 116 (116). Makana v. Varpial
 - (1906) 23 All 333 (335) 1906 All W N 23 3 All L Jour 113, Muhammad Abbar Husain v. Issaf un nissa.
- (1891) 1 Cal W N 513 (516), Sundar Das v. Fatimatulnissa Bejam,
- See the following decisions bearing on the above processions: (1894) 1894 All W N 87 (87), Jamma Proceed v. Golla.
 - (1893-91) 17 Bom 173 (178, 181, 183), Bhopilal v Amestial,
 - (1875-77) 1 111 425 (426, 427) 2 Ind Jur 115, Disa Chand v Sarfras Ali.
 - (1875-77) 1 All 117 (123) (I' B), D ma Chand v. Sarfras.
 - (1911) 10 Ind Cas 239 (240) (All), Chunna v Hulam Sangh
 - (1930) A I R 1930 Bom 55 (57) 122 Ini Cas 562, Dimit Shiriji v Lazzman Mhasiuji
 - (1900) 1900 Pun Re No 62, Bhanan Das v Muhammad Futaf.

Article 148 Note 1

Article 148 Nota in

1a. Scope. - This Article applies to two classes of suits :

1. Suits tn redeem mortgages.

2. Suits to recover possession of immovable property mortgaged.

A right to redeem is a right to require the mortgagee, on payment of the mortgage money, to do the various thiogs referred to in Section 60 of the Transfer of Property Act, 1882, the first three paragraphs of which run as follows :

"60. At any time after the principal money has become due, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, tn require the mortgagee (a) to deliver to the mortgagor the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee. (b) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof in the mortgagor, and (c) at the cost of the mortgagor, either to re-transfer the mortgaged property to him or to such third person as he may direct, nr to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgages has been extinguished.

"Provided that the right conferred by this Section has not been extinguished by act of the parties or by decree of a Court. "The right conferred by this Section is called a right to redsem

and a suit to enforce it is called a suit for redemption."

In a suit for redemption a preliminary decree is passed under Order 34 Rule 7 of the Civil Procedure Code fixing a time within which the mortgagor is tn pay the amount found due, and providing for what is to happen no default. After the expiry of the date fixed for payment, a final decree is passed under Order 34 Rule 8 of the Civil Procedure Code requiring the mortgagee to do the various things specified in Section 60 referred to shove if the mortgager has made the payment, or, if the amount 1s not paid as directed, declaring that the mortgage is foreclosed or ordering the property to be sold, as the case may be.

Where the mortgage amount has been paid off, but the mortgagee is io possession of the mortgaged property, and the mortgagor sues to recover possession of the property, the suit is not one for redemption as contemplated by this Article, but a suit to recover possession

- -- -.

20

^{(1888) 1888} Pun Re No. 157, Hakshat Ras v. Ganga Das.

^{(1880) 1880} Pun Re No. 32, Lala Mal v. Gulam Mahomed. (1878) 1878 Pun Re No. 78, Kair Muhammad v. Ahmudin.

^{(1877) 1877} Pun Re No. 93, Deota v. Kesho.

^{(1877) 1877} Pun Re No. 61, Mt Mah Bibs v. Moton Mal. (1918) A I R 1918 Mad 86 (87) : 43 Ind Cas 50, Raman Kurup v. Chappan Nair.

of the mortgaged property. A decree in such a suit is to be passed in the manner prescribed by Order 34 Rule 9 of the Giril Procedure Code. There are not two decrees to be passed in such suits as in the case of suits for redemption. Article 148 Notes 1a-2

It will be seen from the above that a suit to redeem a usufructuary mortgage involves also a prayer for possession of the mortgaged property and is substantially a suit for possession. But a suit for possession of the mortgaged property, where no payment is to be made by the mortgaged, is not a suit for redemption, as contemplated by the Article.

The period of limitation for both classes of suits is sixty years.

 "Mortgagee."—This Article applies only to a suit against a mortgagee. Thus, it does not apply to a suit against a chargeholder Dut it applies to all kinds of mortgage.

Note 1a

- 1. (1924) A I R 1924 Mad 292 (296) 47 Mad 203 . 79 Ind Cas 510, Appamma
 - v. Chinnaceadu. (1936) A I R 1936 Pat 63 (Gi) · 160 Ind Cas 1066, Baijnath Prasad v. Muncehuar

Note 2

(1926) A I R 1926 Cal 910 (311) 94 Ind Cas 342, Keshab Lai v. Bholanath.
 (1882) 6 Bom 674 (678, 680), Gopal Sitaram v. Desas. (Held that the transaction in question was a conveyance for a term of years and not a mortgage within the meaning of this Article.)

See the following cases which are illustrative of what are and what are not mortgages for the purpose of this Article;

- (1925) A I R 1925 Cal 862 (864, 866) 36 Ind Cas 353, Mohini Mohan v. Sarat Sundari.
 - (1890) 14 Mad 312 (315), Baman v Shathanathan
- (1916) A I R 1916 Oudh 128 (128) 32 Ind Can 353, Raghunath Prasad v.
- (1917) A I R 1917 Oudh 208 (209) 38 Ind Cas 626, Mahabir Singh v. Sheo Ratan
- (1924) A I R 1924 Oudh 169 (170) 74 Ind Cas 42, Baldeo v. Sher Bahadur Singh,
- (1910) 6 Ind Cas 183 (187, 188) (All), Jhanda Singh v. Wahid-ud-din.
- (1883) 1883 Pun Re No. 57, Dewa Singh v. Harnam Singh.
- (1864) 1 Suth W R 7 (9), Fultun Singh v. Reihal Singh (1901) 26 AB 337 (841) 1 AB L. Jour 48 1994 AU W N 39, Jan Ram v. Makunda
- 2 (1931) A I R 1931 Lab 744 (745) 12 Lab 671 135 Ind Cas 506, Jhandu v Nur Mahomed
 - (1926) A I R 1926 Lah 238 (238) 92 Ind Cas 980, Naram Das v Saraj Din.
 - (1923) A I R 1923 Lab S11 (S12) 71 Ind Cas 847, Warry v Girdhari (1920) A I R 1920 Lah 234 (238) 55 Ind Cas 450, Basanta v Dhanna Singh
 - (1919) A I R 1919 Cal 631 (635) 46 Cal 111 45 Ind Cas 753, Purna Chandra Pat v Parada Prasanna
 - (1922) A I R 1922 All 410 (411) 77 Ind Cts 113, Surat Singh v. Umrao Singh
 - (1914) A I R 1914 4ll 547 (548) 27 Ind Cas 35, 4xad Ah v Anand Sarur (1921) A I R 1921 Mad 326 (926), Sann ina Chettiar v Stratami Arimal
 - [But see (1923) A I R 1923 Pat 98 (99) 63 Ind Cas 2-2, Fam Narana East v. Rim Dim Ran (Lumtation Act recognises no distinction between charge and mortgage []
- (1873) 20 Suth W R 375 (376) 2 Suther 897 13 Peng L R 177 (P C), Luchmee Bulsh Ropy Rungert Ram Pandey (Section 1, clause 15 of 4ct of 1859 applied to neutracturary mortgages at 0)

Artiols 148 Note 2 Where there is a partial failure of consideration for a mortgage, the mortgage is valid to the extent of the consideration that has not failed and so the possession of the mortgage under the mortgage deed is only in his capacity as mortgagee and a cuit against him for the recovery of the property is within this Article.⁴

The term "mortgagee" in this Article includes any person who has acquired the rights of a mortgagee, by assignment, subrogation or otherwise.

Where a third person who has no interest in the equity of redemption voluntarily page off a mortgage, he cannot thereby obtain the rights of the mortgage, and if on paying off the mortgage he gets into possession of the mortgaged property, his possession is only that of a stranger and not that of a mortgagee and a suit against bim for the recovery of the property will not he governed by this Article. But, in a recent case, the Madras High Court has held that where a person, though not having any interest in the equity of redemption, pays off a mortgage in the bone fide belief that he is entitled to the equity of redemption, he is subrogated to the rights of the mortgagee and a suit against such a person will be within this Article.

(1927) A I R 1927 Lah 828 (830): 101 Ind Cas 549, Dittu Mal v. Ilahi Baksh. (Atticle applies to lekha mukhis mortgages.) nt Raghot-

> Campbell emption of

English mortgage.)

- 4. (1911) 9 Ind Cas 289 (290, 291) : 35 Mad 114, Turumal Raju v. Pandla Muthial Naidu.
- 5. (1879) 2 Mad 226 (227, 228), Ammu v. Ramakrishna Sasiri.
- (1887) 9 All 97 (102): 1886 All W N 303, Bhagwan Sahai v. Bhagwan Din.
 (1920) A I R 1920 Bom 350 (351): 44 Bom 614: 57 Ind Cas 568, Taramiya
 - Pirsaheb v. Shibelisaheb Fahirsaheb.
 - (1873) 21 Suth W R 13 (13), Jeechoo Sahoo v. Syud Musseevollah. (1892) 15 Mad 331 (332), Arumuga v. Chockelingam.
- 7. (1936) A I R 1936 Pat 60 (61) · 160 Ind Cas 933, Ram Dayal Sen v. Chakrapan Nands (Puisue mortgagee paying oil prior mortgage.)
- 8. (1928) AIR 1925 Smd 167 (170); 79 Ind Cas 466. 19 Sind LR 263, Mahomed Moosa v. Kan-Fatchullah. (Auction-purchaser of interest of mortgagee purchasing under bona fide belief that he is purchasing full title only gets rights of a mortgage and this Article applies to suit assuest him)
- 9. (1924) A I R 1924 All 834 (836) : 78 Ind Cas 1026, Bijas Bahadur v. Parmeshware Ram.
 - (1936) A IR 1936 Mad 803 (309): 161 Ind Cas 999, Veettil Kelu v. Chekkara Chappan.
 - See also Note 85 to Article 144.

Mannadiar.

- [But see (1883) 1883 Pun Re No. 124, Azim v. Mahmud. (The view taken in this case that the stranger becomes an assignce of the mortgage interest, is, it is submitted, not correct.)]
- (1937) A I R 1937 Mad 451 (455): 172 Ind Cas 47, Veettil Keiu v. Ohelkara Chappan.
 (See also (1912) 16 Ind Cas 27 (28) (Mad), Randu Patter v. Annahutti

- In the undermentioned case¹¹ it was held by the Bombay High Court that if a stranger pays off a mortgage with the knowledge and consent of the mortgagor, such etranger acquires a lien on the mortgaged property and that so long as such lien remains enforceable by a suit under Article 132 supra, the possession of the lienor will not be adverse to the mortgagor but such possession will be adverse to the mortgagor from the expiry of the period of limitation under Article 132. It is submitted that the view that the possession of the henor becomes adverse to the mortgagor as soon as a suit to enforce the lien becomes time-barred under Article 132 is not correct. The possession of the henor cannot change its character merely because limitation for a suit to enforce the lien has expired, in the same way as the possession of a mortgagee does not become adverse to the mortgagor merely because the period of limitation for a suit to enforce the mortgage has expired. (See Note 28 to Article 144.)
- 3. Redeeming co-mortgagor, position of .- Before the amend. ment of Section 92 of the Transfer of Property Act by Act 20 of 1929, there was a conflict of decisions as to the position of e co-mortgagor who redeems a mortgage and as to the period of limitation applicable to a suit by the other co-mortgagors for the recovery of their chares of the property which the icdeeming co-mortgagor takes possession of on redemption. The decisions fall into three groups :
 - 1. According to the first set of decisions, the redeeming co-mort. gagor steps into the choes of the mortgageel and a suit against such redeeming co-mortgagor is governed by this Article.18
 - 2. According to the second set of decisions, the redeeming co-mortgagor acquires only a charge on the shares of the

11 (1911) 12 Ind Cas 362 (363) . 35 Bom 438, Sambu Hanmanta Kobal v. Nana Narayan Note 3

1. (1894) 16 All 254 (255) ; 1894 All W N 72, Gobordhan v Sujan

(1892) 14 All 1 (2) : 1891 All W N 211 11 All 423 (F B), Ashfaq Ahmad v. Waesr Als. [See (1910) 5 Ind Cas 123 (123) . 32 All 100, Saiduddin Ehan v

Ratan Lal. (1892) 15 Mad 331 (332), Arumuga v Chokalingam.]

1a.(1929) A I R 1929 All 100 (101), 113 Ind Cas 832, Shiam Lal v Mt Hukum Kuar.

(1922) A I R 1923 All 410 (410) 77 Ind Cas 113, Surat Singh v Umrao Singh.

(1918) A I R 1918 All 986 (987) 40 All 683 47 Ind Cas 833, 17 azır Alı v. Als Islam

(1916) A I R 1916 All 201 (202) SS All 540 . S6 Ind Cas 452. Khigh Ram v. Tail Ram (1889) 11 All 423 (437, 438) 14 All 1 1891 All W N 211 (F B), Ashfaz

Ahmad v. Wazır Alı (1886) 8 All 295 (800) - 1886 All W N 98, Nura Bibs v Jazat Narain. (1886) 1886 All W N 152 (152), Raghuber Sahas v Bunyad Alt

(1885) 1885 All W N 800 (800), Ram Singh v Baldeo Strah.

(1980) A I R 1980 Nag 800 (801) 27 Nag L R 152 127 Ind Cas 5-9, Jan Ram v. Bhilagi

chandrarao.

Singh.

war v. Mt. Sheorani.

Singh v Rangit Singh

Singh.

Mohammad Als Mohammad Khan.

Article 148 Note 3

other co-mortgagors and a suit against him is not governed by this Article which applies only to a suit against a mortgagee.²

3. The third set of decisions, without deciding the question as to whether the redeeming co-mortgagor is subrogated to the rights of the mortgagee, merely proceeds on a decision as to whether and when the possession of the redeeming co-mortgagor becomes adverse to the other co-mortgagors.

The amendment of Section 92 of the Transfer of Property Act by Act 20 of 1929 now makes it clear that a redeeming co-mortgagor is subrogated to the rights of the mortgagee whom he redeems. 2. [1901] 3 Bom L R 685 (690, Filhal Morthwar y, Dmakarrae Ram-

(1902) 26 Bom 500 [603]: 4 Bom L R 178, Vasudev v. Babaji. (1926) A I R 1926 Lah 238 (238): 92 Ind Cas 980, Narām Das v. Saraj Din. 18 18 1923 Lah 311 (312): 71 Ind Cas 847, Wasir v. Gurdhars. (1920) A I R 1920 Lah 234 (923): 55 Ind Cas 450, Basanta v, Dhanna

(1931) 136 Ind Cas 264 (265) (Lah), Ganda Ram v. Munshi Ram, (1910) A I R 1919 Cal 634 (635): 46 Cal 111: 45 Ind Cas 783, Purna Chandra Pai v. Barada Prasunna Bhatlacharjee. (1927) A I R 1927 Ondh 552 (553): 2 Luck 865: 105 Ind Cas 802, Ramesh-

(1920) A I R 1920 Oudh 204 (208) . 60 Ind Cas 560, Mt. Jas Kishers v.

-- - - or Waishud-

(1912) 15 Ind Cas 500 (503) (Bom), Bhaiji Shamrao v. Hajimvya Mahamad.
 (1891) 16 Bom 191 (196): 1891 Bom P J 123, Fahi Abas v. Fahs Nurudin.
 (1885) 1895 All W N 51 (52), Karundad Khan v. Fausan Bibi.
 (1919) A I R 1919 Ondh 337 (359): 52 Ind Cas 875, Sheo Ganga Bakin

[See (1883) 7 Mad 26 (28) : 1 West 610, Chathu Nair v. Aku. (1886) 11 Bom 422 (425), Ramchandra Yashwant v. Sadashiv Abaji.

(1920) 2 Lah L Jour 160, Shahabuddin v. Kasam Ali Khan. (1911) 9 Ind Cas 572 (574): 33 All 463, Jagdip Narain Singh v. Billar Hence, a suit against such co-mortgagor by any of the other co-mortgagors for the recovery of his share of the property on paying the proportionate amount due from him will be a suit against a mortgages within the meaning of this Article and as such will be governed by this Article.

Where a usufructuary mortgage is satisfied out of the rents and profits of the property, and thereafter the property is taken possession of by one of several co-mortgagers, his position is not that of a co-mortgager who has redeemed the mortgage, and so a suit by the other co-mortgagors for the recovery of their shares from him is not governed by this Article, and the provented by the provented by this Article, and the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the provented by the pro

In some decisions, though Article 148 has been applied to the suit against a redeeming co-mortgagor by the other co-mortgagor, the starting point of limitation has been held to be the date of the redemption of the mortgage by the defendant. It is obvious that such a view is incorrect inasmuch as the starting point of limitation under this Article is the date when the right to redeem the mortgage accrues, so that, in the case of a suit against a co-mortgagor who has redeemed a mortgage, limitation under the Article will begin to run from the date when the right to redeem the mortgage accrued and not from the date when the defendant co-mortgagor raid off such mortgage and became subnerated to it?

- (1913) 20 Ind Cas 580 (581): 16 Ondh Cas 103, Muhamad Taq: v. Muhamad Daquar.
- 4 (1934) A I R 1934 All 946 (917) 153 Ind Cas 664, Narottam Das v. Sanual
 - (1933) A T R 1933 All 223 (229) 144 Ind Cas 152, Ahmad Zaman Khan v. Daldeo Das.
 - (1939) A I R 1939 Oudh 127 (133, 131) 174 Ind Cas 714 (F B), Kundanlal v Sheikh Pagir Baksh
 - The contrary crew taken in the following cases is not correct (1933) A I R 1933 Lab 91 (92) 141 Ind Cas 404, Mt. Radha v Ajudhia
 - Prashad (1936) A I R 1936 Lah 290 (291) 159 Ind Cas 633, Mohammad dli v Ghu-
 - lam Nabi (1931) A I R 1931 Lah 744 (745) 12 Lah 671 135 1nd Cas 506, Jhandu v
 - Nur Mahomed. (1933) A I R 1933 Bom 114 (117) 57 Bom 131 141 Ind Cas 8, Ramchandra
 - (1933) A 1 K 1933 Bom 114 (111) 54 Bom 131 141 Ind Cas 6, Mamendadara
 Khasarao v. Ganesh Balwant.
 - (1938) A I R 1938 Rung 65 (67) 176 Ind Cas 923, Ma F. Khin v P S Mohamed Als
 - (1931) 132 Ind Cas 261 (262) (Oudh), Ram Agre v Ramudd
- 5 (1913) 20 Ind Cas 580 (584) 16 Oudh Cas 163, Muhamad Taga v Muham. mad Bagnar
 - (1897) 20 All 182 (184) 1898 All W N 19, Inagrif Husen v Als Bussin (1894) 16 All 254 (255) 1894 All W N 72, Gobardhan v Sujan
- 6. (1930) A 1 R 1930 Nag 300 (901) 27 Nag L R 152 127 Ind Cas 689, Jairam v. Bhilaju.
- - Tail Rim (1922) A I R 1922 All 410 (110) 77 Ind Cas 113, Surat Singh v Umras Singh

Article 148 Note 3

4. Adverse possession by mortgagee against mortgagor. --This Article only applies where the suit is against a mortgagee as such. Where the mortgagee is not entitled as such to the possession of the mortgaged property hut enters into possession without title, the suit against him for the recovery of the property will not be within this Article.

A mortgagee who has entered into possession of the mortgaged property as mortgagee cannot, during the subsistence of the mortgage, convert the nature of his possession into that of a full owner, merely hy asserting his absolute title to the property.1 Nor does a mere order in mutation proceedings entering the name of the mortgages

- 1. (1905) 32 Cal 296 (312) . 32 Ind App 23 . 9 Cal W N 201 : 2 All L Jour 71 : 7 Bom L R 1 1 Cal L Jour 584 . 8 Sar 784 (P C), Khairajmal v. Dann
 - (1923) A I R 1923 All 613 (613) : 74 Ind Cas 830. Raghunath Singh v. Jetto
 - Singh. (1915) A I R 1915 All 203 (206) : 29 Ind Cas 408, Panna Lal v. Rameshar
 - (1911) 10 Ind Cas 909 (1000) (All), Gandharp Singh v. Harikishna.

 - (1908) 1908 All W N 1 (2): 4 All L Jour 787.3 Mad L Tim 182, Jhaba Lal v. Chajju Mal.
 - (1875) 7 N W P H C R 220 (222) (F B), Sheopal v. Khadim Hossein.
 - (1896) 21 Bom 793 (796), Pandu v. Anpurna
 - (1889) 14 Bom 279 (281) : 1889 Bom P J 311, Bhagvant Govind v. Konds
 - Mahadu. (1868) 10 Sath W R 219 (220), Ajoodhya Pershad v. Esharee Dyal.

 - (1926) A I R 1926 Lab 519 (550) : 95 Ind Cas 9, Jiwan Singh v. Ghasita. (1908) 1908 Pan Re No. 28: 1908 Pun W R No. 41: 1908 Pun L R No.
 - 141. Balwant Singh v. Ramdas.
 - (1882) 1882 Pan Re No. 49, Teju Mal v. Zulfakar Shah. (1929) A I R 1929 Mad 16 (18): 109 Ind Cas 795, Kandaswamy Mudaliar v.
 - Ponnuswams Mudahar. (1914) A I R 1914 Mad 578 (579) 37 Mad 545 · 16 Ind Cas 694, Usuman
 - Khan v. Nagalla Dasanna. (1914) A I R 1914 Mad 489 (493): 15 Ind Cas 343 (346): 37 Mad 423, Ariya
 - Puthira Padayachs v. Muthukumaraswams Padayachs.
 - (1902) 25 Mad 507 (511): 12 Mad L Jour 119, Seshamma Shettati v.
 - Chickaya Hegade. . .
 - :hche
 - Mırza v Ahmad Shah (1926) A I R 1926 Ondh 517 (518) : 95 Ind Cas 849, Nuranhar Prasad v. Mt. Bechai.
 - (1926) A I R 1926 Oudh 491 (492) : 93 Ind Cas 832, Barrang Bali v. Mi.
 - Mahrapa. (1921) A I R 1921 Oudh 124 (125) : 21 Oudh Cas 155 : 63 Ind Cas 284,
 - Mahendra Bahadur Singh v. Chandrayal Singh. (1920) A 1 R 1920 Oudh 302 (901) : 23 Oudh Cas 269 . 60 Ind Cas 404, Tslak
 - Chand v. Shambhu Singh.
 - (1912) 14 Ind Cas 584 (585) : 15 Oudh Cas 39, Amir Ali v. Nias Ali.

as proprietor change the character of his possession.² But it has been held that a decree of a Settlement Court declaring the mortgages to be the owner of the property has the effect of altering the character of his possession so as to take out of the purview of this Article the mortgage's suit for the recovery of the property.³

The mere fact that a mortgage has been discharged out of the usufruct of the property or otherwise, does not alter the character of the possession of the mortgagee (who continues in possession aften such discharge) and make the possession one held as concer and not as mortgagee.* So also, the continuance in possession of a mortgage

- (1911) 11 Ind Cas 853 (853) (Low Bur), Mg. Shue Paung v. Maung On.
- (1911) II That Cas 605 (605) (Elbw Burg, mg. Bates Fating v. Maung On. (1926) A I R 1926 Pat 512 (513): 97 Ind Cas 348 . 6 Pat 102. Dinannih Rai
- v. Rama Ras. (1926) 93 Ind Cas 934 (934) (Lah), Jowahar v. Amar Chand.
 - [See also (1863) 1 Med II C R 146 (147), Pudvyakovilagalla v. Allunannalatta Kad,nne
 - (1889) 18 Mad 89 (40), Rarra Nayar v. Modin (When a mortgage was in fact for Rs 62, the mortgage cannot by merely asserting for over twelve years that the mortgage was for a larger amount acquire a prescriptive right to hold as a mortgage for the larger amount by alleging the renewal of the mortgage deed []
- (1926) A I R 1920 Oudh 594 (600) 97 Ind Cas 922 1 Luck 529, Achche Mirca v Ahmad Shah
 - (1923) 72 Ind Cas 989 (993) (Pesh), Ghulam Haidar Shah v. Dazid Shah, (1925) A I R 1925 All 34 (35) : 80 Ind Cas 944, Ram Ganesh Ras v. Rup
 - Naram Ros. (1929) 120 Ind Cas 789 (790) (Lah), Godar v. Nezamdin.
 - [But see (1918) A I R 1918 Lah 197 (198) . 48 Ind Cas 447, Ram

prietary body of the village and mutation was effected in his fivour, without any objection from the proprietry body—Held that the possession of the mortgages became adverse to the proprietary body of the village from the date of the mutation i)

- (1904) 7 Oudh Cas 259 (263, 264), Basawan Singh v Nawab Badihah Bahis Begam
 (1920) A I R 1920 Oudh 802 (304) 23 Oudh Cas 263 60 Ind Cas 404, Tilah
 - Chand v. Shambu Singh.
- 4, (1883) 1883 All W N 202 (202), Kedar Nath v Ulfat Ras
 - (1926) A I R 1926 Born 40 (42) 49 Born 847 91 Ind Cas 319, Rachappa Chanbasappa v Ningappa
 - (1926) A I R 1926 All 186 (188) 89 Ind Cas 574, Mt Bets Bas v. Tantya Singh
 - (1930) A I R 1930 Cal 15 (16) 56 Cal 1180 121 Ind Cas 407, Harant Golder v. Jaladhar Bisuas.
 - (1926) A I R 1926 Cal 910 (912) 94 Ind Cas 342, Keshab Lal v Dholanath, (1910) 7 Ind Cas 385 (386) 33 All 97, Sudarshan Das v. Ram Pershad
 - (1912) 13 Ind Cas 963 (964) 84 All 261, Haberbullah v Abdul Hamid.
 - (1933) A I R 1933 Oudh 15 (14, 15) 140 Ind Cas 189, Ram Balhish Sinjh v. Ganga Pal Singh (1919) 37 Mad L Jour (x R C) 6 (6).
 - (1924) A.I. R. 1924 A.II. 522 (522) 63 Lad Cas 740 Gerand Ram v. Ram Keer (But see (1924) 46 Mad L. Jour (N. R. C.) 20 (50) (When meritaring their redempton refuses to give up presession, the nature of his possession is altered and thereafter he sets up title as owner to the knowledge of the meetinger and a suit Lir possession must

defendant's pessessen was altered)]

be filed within twelve years of the date on which the nature of

4. Adverse possession by mortgagee against mortgager. — This Article only applies where the suit is against a mortgagee as such. Where the mortgages is not entitled as such to the possession of the mortgaged property lut enters into possession without title, the suit against him for the recovery of the property will not be within this Article.

A mortgagee who has entered into possession of the mortgaged property as mortgagee cannot, during the subsistence of the mortgage, convert the nature of his possession into that of a full owner, merely by asserting his absolute title to the property.\(^1\) Nor does a mere order in mutation proceedings entering the name of the mortgagee

Note 4

(1905) 22 Cal 296 (812): 32 Ind App 23: 9 Cal W N 201: 2 All L Jour 11: 7 Bom L R 1.1 Cal L Jour 584: 8 Sar 784 (P C), Khairajmal v. Davm.

Ram Narain Singh.

(1923) A I R 1923 All 613 (613): 74 Iad Cas 830, Raghunath Singh v. Jetto Singh.

(1915) A I R 1915 All 203 (206) ; 29 Ind Cas 403, Panna Lal v. Rameshar Sahai.

(1911) 10 Ind Cas 999 (1000) (All), Gandharp Singh v. Harskishna.

(1903) 1903 All W N 1 (2) 4 All L Jour 787 . 3 Mad L Tim 182, Jhaba Lal v. Chajju Mal.

(1875) 7 N W P H C R 220 (222) (F B), Sheopal v. Khadim Hossein. (1896) 21 Bom 793 (796), Pandu v. Appurna.

(1889) 14 Bom 279 (281): 1889 Bom P J 311, Bhagvant Gorind v. Konds Mahadu. (1888) 10 Suth W R 219 (220), Ajoodhya Pershad v. Eshares Dyal.

(1926) A I R 1926 Lah 549 (550) : 95 Ind Gas 9, Jiwan Singh v. Ghasita. (1908) 1908 Pun Re No. 28 : 1908 Pun W R No. 41 : 1908 Pun L R No.

141, Balwant Singh v. Ramdas (1882) 1882 Pun Re No. 49, Teju Mal v. Zulfakar Shah.

(1929) A I R 1929 Mad 16 (18): 109 Ind Cas 795, Kandaswamy Mudaliar v. Pomnuswam: Mudaliar. (1914) A I R 1914 Mad 578 (579). 37 Mad 545: 16 Ind Cas 694, Usuman

Khan v. Nagalia Dasanna.

(1914) A 1 R 1914 Mad 489 (493) : 15 Ind Cas 343 (346) : 37 Mad 423, Arsya Puthira Padayachi v. Muthukumaraswami Padayachi.

(1902) 25 Mad 507 (511): 12 Mad L. Jour 119, Seshamma Shellats v. Chickaya Hegade.

thehe

٠.

(1926) A I R 1926 Oudh 517 (518) - 95 Ind Cas 849, Nerankar Prasad v. Mt. Beckas

(1926) A I R 1926 Ondh 491 (492) . 92 Ind Cas 632, Bajrang Bals v. Mt. Mahraya. (1921) A I R 1921 Ondh 124 (125) 24 Ondh Cas 155 : 63 Ind Cas 284,

Mahendra Bahadur Singh v Chandrapal Singh. (1920) A I R 1920 Ondh 302 (301): 23 Oudh Cas 260: 60 Ind Cas 401, Tilak

Chand v. Shambhu Singh. (1912) 14 1nd Cas 584 (585) . 15 Oudh Cas 99, Anir Ali v. Niaz Ali.

5. Invalid transfer of equity of redemption to mortfagee. Effect.—For a full discussion on the subject, see Noto 28 to Article 142 ante. Suppose the mortfager transfers or relinquishes in favour of the mortfagee the equity of redemption.and such transfer or relinquishment is invalid and inoporative, as the mortfagee's possession from the date of such attempted transfer in his character as mortfagee or under a claim of full ownersbip? On this question, there is a conflict of decisions. The generally accepted view is that though the transfer may fail to vest the equity of redemption in the mortfager, the possession of the mortfagee but under a claim of full ownership, so as to take out of the purview of this Article the suit by the mortfagee for the recovery of the property from the mortfagee. This view proceeds on the ground that the parties to a mortfage can agree as to what the character of the possession held

(1930) A.I. R. 1930 Mad 905 [314, 315]. 193 Ind Cas 981; 53 Mad 805, Ambu. Nor v. Acta Nav (Sunt for possession by undirectary mortgage—Haymanna decree granting poversion to mortgage and providing interaction that mortgage after depositing mortgage morely should get possession of proporties from mortgage failing which mortgage to continue in possession as mortgage; —Il provession is not delivered.

(1922) A I R 1922 Mad 407 (408); 70 Ind Cas 33, Omayurupagam Mutt v. Suassoria Theran.

(1926) A I R 1926 Sind 145 (148) 91 Ind Cas 87: 20 Sind L R 277, Sulleman Hashim v. Exo (Mortgages taking possession as inortgages, but wrongfully—Still his possession is only as mortgage)

(1910) 5 Ind Cas 478 (479) (Mad), Sangamma Nacker v Ramasuamy Nacker (Mortgagor's claim in a prior suit to declare the mortgage had does not enable mortgage to prescribe to the mortgage dispersity from mortgage date—His second suit to redeem mortgage not barred under Article 144, Limitation Act, 1877.

(1923) A I R 1923 Lah 366 (368) 73 Ind Cas 475, Shujanddin v. Sher Mohemed (Co-mortgages redeeming another co-mortgage — His posgession does not become adverse aguinst mortgage)

Note 5

 (1928) A I R 1928 All 726 (780) 50 All 986 118 Ind Cas 177 (F B), Sohan Lal v. Mohan Lal.

(1929) A I R 1929 Mad 16 (18, 19) 109 Ind Cas 795, Kandasams Mudaliar v. Ponnusams Mudaliar.

(1921) A I R 1921 Mad 213 (214, 216) G3 Ind Cas 215, Musijadu v. Gopala Reddy

(1921) A I R 1921 Mad 62 (83, 84, 85) 44 Mad 253 62 Ind Cas 603, Kandasama Pellas v. Channoppa

(1916) A I R 1916 Mad 811 (815,816) 31 Ind Cas 678,6cmndu v. Mallatta (1914) A I R 1914 Mad 578 (579, 580) 57 Mad 545 16 Ind Cas 694, Usman Khan v. Nagalla Dassinna

(1926) A I R 1926 Oudh 145 (145) . 90 Ind Cas 726, Rad Ale v In arela

(1925) A I R 1925 Oudh 385 (380) 87 Ind Cas 180, Sheo Nath v. Thain I at Ram. (1921) A I R 1921 Ondh 124 (125) 24 Oudh Cas 185 63 Ind Cas 284,

Mohendra Bahadur Singh v Chandrapal Singh.

hy the mortgages should be from a certain date.² But the contrary view has been held in certain decisions,³ according to which the invalid transfer can have no effect on the character of the mortgages in spossession which therefore is only possession held as mortgagee in spite of such transfer, and so the suit against the mortgage for the recovery of the property will be governed by this Article notwithstanding the attempted transfer of the equity of redemption to the mortgagee.

A mere contract to sell the equity of redemption in favour of a nsufructuary mortgagee will not be sufficient to alter the character of the possession of the mortgagee, 3a

Where the mortgagee obtains a transfer of the equity of redemption from a third party who is not authorized to transfer it, the mortgagee's possession is not affected by such transfer and continues to he only a possession held as mortgagee. Hence, notwithstanding such transfer, a suit against the mortgagee for the possession of the property will only he a suit against a mortgagee and therefore, will be governed by this Article. On this principle, where there are several co-mortgagers and the equity of redemption in the mortgage is transferred to the mortgagee by one of the co-mortgagors, the possession of the mortgagee as regards the other co-mortgagors is only that of a mortgagee and a suit by such co-mortgagors will be governed by this Article. A contrary view, however, has heen taken

 ⁽¹⁹¹⁴⁾ A I R 1914 Mad 578 (579). 16 Ind Cas 694 (695): 87 Mad 545, Usman Khan v. Nagalla Dasanna.

⁽¹⁹²²⁾ A I R 1922 Outh 7 (10): 67 Ind Cas 572: 25 Outh Cas 115, Bifai Partab Singh v. Raghura; Singh.

⁽¹⁹²⁵⁾ A I R 1925 Mad 566 (567) : 87 Ind Caz 391, Sheikh Dawood v. Mohiden Batcha.

^{3. (1912) 13} Ind Cas 852 (853) (Lah), Lehna Singh v. Santa Singh.

⁽¹⁹¹⁵⁾ A I R 1915 Mad 573 (574, 575); 39 Med 1158; 25 Ind Cas 772, Muthukaruppan v. Muthu Samban.

⁽¹⁹¹⁴⁾ A I R 1914 Mad 489 (493): 15 Ind Cas 343 (346): 37 Mad 423, Arsyaputhira Padayachi v. Muthuhumarasami Padayachi.

⁽¹⁹¹⁷⁾ A I R 1917 Nag 33 (36): 46 Ind Cas 872. Awdh Singh v. Nanhai.

³a (1925) A I R 1925 Oudh 114 (115) . 82 Ind Cas 406 : 28 Oudh Cas 100, Sitla Sahai v. Dhum Singh.

^{4. (1907) 29} All Gi0 (647) · 1907 All W N 221 : 4 All L Jour 521, Musaffar Ali Khan v. Parbats.

^{(1878) 1} All 655 (658, 659), Als Mahammad 7. Lalla Bulsh.

^{(1897) 21} Bom 793 (796), Pandu Lakshman v. Anupurna,

⁽¹⁹¹⁰⁾ A I R 1916 Lah 336 (337) . 32 Ind Cas 961, Abdul Asizkhan v. Kale-Shah.

^{(1912) 14} Ind Cas 584 (585) : 15 Oudh Cas 39, Amir Ali v. Niaz Ali.

⁽¹⁹³⁶⁾ A I R 1936 Lah 753 (756) . 163 Ind Cas 506, Sher Mohammad Khan v. Chuhr Shah.

⁽¹⁹²⁹⁾ A I R 1929 Lah 90 (51): 113 Ind Cas 540, Din Mohammad v. Safdar Ali.

[[]But see (1924) 46 Mad L Jone 82 (83) [N B C). [Submitted not correct.]]. 5. (1909) 4 Ind Cas 264 (265) [Bom], Hanmantha Yamaji v. Gopal Sadashiv.

in the undermentioned cases.⁶ It is submitted that such a view is not correct on principle.

Where the equity of redemption under a mortgage is transferred to the mortgage by a person alleged to be the adopted son of the mortgager, after the latter's death, and each alleged adoption is with the rightful herr of the mortgagor can see for redemption of the mortgage within the period of sixty years given by this Articlo, although he has not such within the period of six years under Article 118 supra for a declaration that the adoption is invalid.

Where the equity of redemption under a mortgage is sold to the mortgage by the guardian of a minor mortgager, the latter must, if he means to impeach the sale, see to set it saids within three years of his attaining majority (see Article 44). If he fails to do so, he cannot thereafter sue to redeem the property within the longer period conferred by this Article.⁸

6, Invalid foreclosure proceedings — Effect. — Where a mortgage, not being entitled to possession under the mortgage, takes possession of the mortgage property as a result of foreclosure proceedings which are invalid, the possession of the mortgage will not be in his character as mortgages but under a claim of ownership and hence, a suit against him for the recovery of the property will not be governed by this Article.¹ But, where a mortgage is already in possession as mortgage, the fact that subsequent proceedings are instituted for foreclosure of the mortgage (which proceedings turn instituted for foreclosure of the mortgage (which proceedings turn

- (1928) A I R 1923 Lah 74 (74) . 68 Ind Cas 783, Amer v Nadir .11s.
- (1935) A I R 1935 Lab 924 (925) 160 Ind Cas 557, Nanab v. Lachhman Singh.
- (1920) A I R 1920 Bom 20 (20) . 44 Bom 848 58 Ind Cas 39, Kalu Deoba v. Rurchand Kishandas.
 - (See also (1009) 5 Ind Cas 123 (124) 32 All 160, Saiduddin Khan v. Ratan Lat. (Purchase in execution of one co-mortgagor's interest—Possession of mortgages not adverse to the other comortgagor.)]
- (1923) A I R 1923 Oudh 50 (52), 25 Oudh Cas 215: 70 Ind Cas 983, Janks Shah v. Mohammad Abbas
 - (1922) A I R 1922 Bom 1 (1) 67 Ind Cas 219, Ibhran Gulam Husain v. Mohideen Balku Modak
- (1925) A I R 1925 Oudh 182 (183) 80 Ind Cas 5-2, Ram Chhore Laksh v. Ram Surat
- 7. (1916) A I R 1916 Lah 336 (337) S2 Ind Cas 961, Abdul Ana Khan v. Kala Shah
- (1925) A I R 1925 Lah 619 (620) 87 Ind Cas 602 6 Lah 447, Labha Mat Malak Ram
 - (1920) A I R 1920 Rom 1 (6,7) 44 Rom 742. 58 Ind Cas 257 (F B), Fabranya Limanna v Mahadu Lumanna.

Note 6

 (1928) A I R 1928 All 197 (198) 114 Ind Cas 187, Luchs Ras v Jayarnath Sahu.

.

- (1926) 93 Ind Cas 934 (935) (Lah), Jawabar v Amar (hand
- (1911) 11 Ind Cas 429 (431) (Lah), Jaca Khan v Lathers Chand.

Artiole 148 Notes 6—7 out to he invalid), will not convert the possession into one held as full owner. Hence, a cuit against the mortgages for the possession of the property will be governed only by this Article notwithstanding the foreclosure proceedings.

7. Mortgage providing that on default of mortgagor in paying the mortgage money within a fixed term, he should become absolute owner of the property - Effect. - Notwithstanding a condition in a mortgage deed that on default of the mortgagor in paying the mortgage money (or interest) within a etipulated period, the mortgagee should become the absolute owner of the property, the mortgage does not come to an end on such default hy the mortgagor and the possession of the mortgagee (where he is in possession) is only that of a mortgagee even after such default.1 But where in pursuance of such a clause in the mortgage deed the mortgagor himself consents that the mortgagee should hold the property as owner from a certain date, and the mortgages accordingly hegins to hold the property as owner, his possession will not be that of a mortgages hut under a claim of full ownership.2 The reason auggested is that it is open to the parties to a mortgage to agree what the character of possession to be held by the mortgagee should be from a certain date.3 In such a case, though the mortgagor's consent in the absence of a transfer of the equity of a redemption to the mortgages cannot confer on the latter full title to the property, yet,

(1925) A I R 1925 Lah 53 (54): 79 Ind Cas 39, Munna Lal v. Hamid Als.

2. (1895) 23 Cal 228 (238, 237) : 22 Ind App 183 : 5 Mad L Jour 261 : 6 Sar 649 (P O), Kishors Mohun Roy v. Ganga Bahu Debi.

[See also (1903) 1908 Pan Re No. 65: 1908 Pan L R No. 90: 1908 Pan W R No. 113, Indar v. Assa Sangh. (Mortgage by conditional sale—Invalid forcelosure proceedings—Mutation of names in mortgagee's favour—No adverse possession.]

- 1. (1872) 9 Bom H C R 79 (83), Krishnazi alias Babaji Keshac v. Ravji Sadashiv.
 - (1919) A I R 1919 Bom 146 (148): 43 Bom 863: 53 Ind Cas 164, Bas Kanku v. Bai Jadav.
- ' (1872) 9 Bom H C R 69 (72, 78), Shanlarbhai Chulabhai v. Kassi Dhas Vethalbhas.
- ' (1923) A I R 1923 Lah 71 (72) : 68 Ind Cas 883, Zora v. Chandu.
- (1914) A I R 1914 Lah 850 (352): 1914 Pan Re No. 94: 22 Ind Cas 837, Bulaks Mal v. Duns Chand.
- (1914) A I R 1914 Mad 578 (579): 16 Ind Cas 694 (695, 696): 87 Mad 545, Usuman Khan v. Nagalla Dasanna.
- (1922) A I R 1922 Oudh 133 (134): 68 Ind Cas 223: 25 Oudh Cas 83, Bashir Hussesn v. Chandra Pol Singh.
 - [See also (1924) A I R 1924 Rang 200 (201): 62 Ind Cas 829, Mg. San Chein v. Ma Daung U. (Mortgagee holding land as owner to knowledge of mortgagor—Mortgagee's possession is adverse to mortgagor.)]
- (1914) A I R 1914 Mad 578 (579): 16 Ind Cas 694 (695): 37 Mad 545, Usuman Khan v. Nagalla Daranna.

the mortgages will acquire such title by prescription if he continues in possession for a period of twelve years under the claim of full ownership. (See Note 28 to Article 142 ants)

In the undermentioned case, a mortgage provided that in case the mortgage failed to pay the mortgage money within a certain date, the mortgages should take possession of the mortgaged property in his own right. On the expiry of the fixed term, the mortgage took possession of the property. It was held that the possession of the mortgage was not in his capacity as mortgage but in assertion of his full ownership to the property and so, a suit against him for the recovery of the property from him was not governed by this Article.

See also Note 5 above.

- 8. Mortgagee purchasing murtgaged property in contravention of Order 34 Rule 14. Civil Procedure Code - Effect. -Where a mortgagee purchases the mortgaged property in execution of a money decree for the mortgage deht, such sale is invalid under Order 34 Rule 14, Civil Procedure Codo. As observed in Khairasmal v. Daim, such a sale cannot relieve the mortgagee of his ohligations as mortgagee or deprive the mortgagor of his right to redeem, But such a sale is not void. It is only liable to be set aside at the instance of the mortgagor. Hence, unless the cale is set aside by an application made within the period prescribed by Art. 166 infra, the cale would he hinding on the mortgagor and he cannot thereafter sue to redeem the mortgage, ignoring the sale.3 Where, however, the mortgagor gets the sale set aside by a proper application as above, the parties will continue as mortgagor and mortgagee and the mortgagor can sue for redeeming the property from the mortgagee within the period of limitation provided by this Article.
- 9. Yold mortgage Person entering into possession under such murtgage. — Where a mortgage is void, the possession of the mortgage who enters into possession of the mortgaged property under such void mortgage is adverse to the mortgager. A suit by the mortgager for the recovery of the proporty against such mortgage (on the ground of the latter heing merely a trespassor) will not be within this Article. Such a suit must be brought within twelve years
 - 4. (1882) 1882 All W N 84 (85), Bhola v. Ajudhsa Prasad.

Nnte 8

- (1904) S2 Cal 296 (316): S2 Ind App 23: 9 Cal W N 201: 2 All L. Jour 71: 7 Bom L R 1: 1 Cal L Jour 584: 8 Ear 734 (P C).
- (1920) A I R 1920 Cal S63 (366): 55 Ind Cas 157: 47 Cal S77 (F B), Uttam Chandra v. Raj Krishna.

Note 9

(But see (1928) A I R 1928 All 552 (\$52): 117 Ind Cas 831, Mt. Raj Rani v. Gulab. (The proposition in this case that the possession of the mortgage in such cases is not adverse is not correct.)]

from the mortgagee entering into possession. But a person who enters into possession of a property under a roid mortgage can prescribe only for a mortgagee's tile to such property and to for a absolute title. Hence, even after the expiry of twelve years from his entering into possession, although he cannot be ejected as a trepasser, a suit can be brought against him as a moltgagee within the longer period of limitation provided by this Article.

Where a person is let into possession under a void mortgage and subsequently, within the period of twelve years from his entering into possession, the property is sold to him under a void deed of sale, his possession from the date of the sale becomes one held as owner and hence, he presembes for a full title from such sale.

A mortgage of vatan property by a vatandar is valid during his lifetime but is not hinding on his successors. Where a mortgage from a vatandar enters into possession under the mortgage and continues to he in possession after the vatandar's death, it has been held that the mortgagee's possession is adverse to the successors of the vatandar from the latter's death; but the mortgagee acquires by such adverse possession against the successors, only the title of a mortgagee. As to correctness of this view, see Note 61 to Article 142 ante.

Extinction of mortgage by decree or order of Court.—
 The mere fact that a decree for redemption has been passed against

- (1920) A I R 1920 Lah 300 (301): 1 Lah 549: 59 Ind Cas 478, Shah Nawas v. Sheikh Ahmad.
- 3. (1924) A I R 1924 Mad 292 (294): 47 Mad 203: 79 Ind Cas 510, Appamma v. Chinnareadu.
 - (1924) A I R 1924 Mad 720 (720): 80 Ind Cas 561, Aiyisa Buri Ammal v. Kalandarsa Rowther.
 - (1912) 16 Ind Cas 960 (960, 961) (Mad), Sundara Gurukkal v. Subramania Archabar.
- (1929) A I R 1929 Nag 115 (116) : 118 Ind Cas 57, Sukhlal v. Bisesar.
- 4. (1927) A I R 1927 All 311 (314): 100 Ind Cas 316, Maha Mangal Rat v. Kishun Kandu.
 - (1921) A I R 1921 Mad 410 (411 412); 44 Mad 946; 64 Ind Cas 323, Sontmagopala Dasce v. Inapulalapula Rami.
 - Sontynagopala Dasce v. Inaputalapula Hami. (1917) A I R 1917 Oudh 116 (117): 20 Oudh Cas 208: 41 Ind Cas 862, Bhars v. Adya Nath.
 - (1930) 123 Ind Cas 195 (197) (Mad), Sayyapureddy Abbayya v. Sayam Appanna.
 - (1930) A I R 1936 Pat 63 (65): 160 Ind Cas 1066, Baif Nath Prasad v. Muneshwar Sunsh.
 - (1932) A I R 1932 All 259 (260) : 140 Ind Cas 42, Halka v. Nannhon.
- 5. (1924) A I R 1924 Mad 720 (721): 80 Ind Cas 561, Aigisa But Ammal v. Kalandarsa Rowther.
- (1925) A I R 1925 Mad 1020 (1020, 1021) : 86 Ind Cas 433, Aiyisa Brit Annual v. Kalandarsa Routher. (But see (1926) A I R 1926 Mad 377 (377) : 93 Ind Cas 955, Butchi
- Raju v. Seetharamayya.]

 G (1915) A I R 1915 Dom 131 (131) : 29 Dom 587 : 30 Ind Cas 390, Ramchandra Venkay v. Kallo Deeps.

Article 148

Notes

10-15

a mortgagee does not alter his character as mortgagee and a second suit for redemption against bim (assuming such a suit to be maintainable) is only a suit against a mortgagee and so is governed by this Article.¹

- Effect of proceedings under Bengel Regulation, 17 of 1806. — See the undermentioned cases.²
- 12. Abendonment of land by mortgagor.—Where a mortgagor sues for the redemption of the mortgaged land within the period of limitation prescribed by this Article, the suit is maintainable although the land had previously been abandoned by the relatifif.¹
- 13. Adverse possession by atranger. See Notes 84 and 65 under Article 142. ante.
- 14. "To redeem or to recover possession." See Note Ia ahove. Where a dispute as to the amount due on a mortgage is referred to arbitration and the arbitrators decide what the amount is and also that the mortgagees should be in possession for a certain number of years, a suit for redemption by enforcing the award

Note 10

- (1923) AIR 1923 Bom 300 (300, 301): 47 Bom 692: 72 Ind Cas 556, Hanmantha v. Shidu Sambhu.
 - (1892) 15 Mad S66 (370, 371), Ramunni v. Brahma Datton.
 - (1909) 4 Ind Cas 939 (940) (Lab), Mohan v. Dialu.
 - (1918) A I R 1918 Dom 1 (12) · 49 Ind Cas 894 : 43 Bom 334 & 477 (F B), Ramji Bapuji v. Pandharinath Ravji.
 - [But see (1870) 13 Suth W R 78 (80), Ram Surun Singh v. Mahomed Ameer]

Note 11

1. (1914) A I R 1914 All 242 (246) 25 Ind Can 611, Mr. Zasbunnassa v. Para-

his suit, the possession of the mortgagee ceased to be that of mortgagee and subsequent suit against him came within Article 144)

- (1923) A I B 1923 Nag 274 (277) '22 Ind Cas 121, Bupeban v Reddon, (Notgage assumg notione of foreclosure under the Regulation, but not taking any further proceedings after the year of gates allowed by the notice Relationship of mortigon and mortgage does not change and the subrequent possession of the mortgageo is not adverse to the mortcaror!
- (1900) 1900 Pun L R 167 (169), Sula Khan v. Manak Sungh. (Suit for redemption of a mortgage by way of conditional sals Regulation 17 of 1806 Irregular proceedings Effect of Mortgagor can redeem within period presented by Article 148.)

Note 12

 (1917) A I R 1917 Lah 461 (462) S6 Ind Cas 221, Md. Chiragh Shah v. Choghatta. (No question of alandonment can arise before expiry of limitation in space cases.) Article 148 Notes 14—18 would be governed by this Article.1

Where a person is made to sign a document by misrepresentation that it is only a mortgage deed, while, in fact, it is a safe deed, a suit by such person for the redemption of the mortgage on the ground that the sale under such circumstances is void, is governed by this Article and not by Article 91.² The reason is that a void document need not be set aside and Article 91 does not apply to such cases (see Note 3 to Article 91 supra).

See also the undermentioned caso.3

- Claim for surplus profits Limitation. See Notes under Article 105, supra.
- 16. Accessions to mortgaged property. An accession to mortgaged property to which the mortgager is entitled on redemption is not property mortgaged, and hence, the mortgager's such an accession is not governed by this Article.¹
- 17. "Immoveable property."—For the meaning of the expression "immoveable property," see Article 3, Note 4; Article 132, Note 19 and Note 6 to Article 142, supra.

A grove of mahua trees and the right to officiate as priest have been held to be "immoveable property" for the purpose of this Article.

18. Starting point of limitation. — Subject to the provise contained in the third column of the Article, the period of limitation under this Article begins to run from the time when the right to redeem or to recover possession accures.

Note 14

 (1923) A I R 1923 Rang 108 (109): 70 Ind Cas 517: 4 Upp Bur Rul 124, Maung Ne Dun v. Maung Cho.

2 (1912) 13 Ind Cas 375 (376) (Upp Bur), Nga Paw v. Nga Lu Gale.

8. (1923) A I R 1923 Rang 232 (233, 326). To Ind Cas 624, If a Ifin Thav. If a The Stu. (Law in Duthh Burns pure to introduction of Transfer of Property Act in 1922 — When in the case of a mortgage containing a forteture clause the mortgage of lefter to redeem the mortgage within the period fixed but the mortgage refuser redemption and the mortgage thrips as nit for the purpose, the suit may be regarded as nor for specific performance and limitation for the suit is three years from the date on which redemption was refused.)

Note 16

 (1917) A I R 1917 Lah 480 (492): 42 Ind Cas 469, Khuda Dad Khan v. Girdhars Ram.

Note 17

(1925) A I R 1925 Oudh 103 (108) · 81 Ind Cas 650, Chands v. Sat Naram.
 (1883) 10 Cat 78 (74) : 18 Cal L R 263 : 8 Ind Jur 197, Raghoo Pandey v. Kassy Party.

(See also (1908) 1903 Pun Re No. 84 : 1903 Pun W R No. 96 : 1903 Pun L R No. 163. Mohan Lal v. Janki.]

Section 60 of the Transfer of Property Act provides as to when the right to redeem a mortgage accrues. The right accrues when the mortgage money has become "due." Before the amendment of the Section by Act 20 of 1929, the word used in the Section was "payable." Nevertheless, it was generally held that when a period was fixed for the payment of mortgage money, the right to redeem accrued only after the expiry of the period and not before,1 except where there was a special contract providing to the contrary.18 This

- 1. (1914) A I R 1914 P C 36 (37): 36 AH 195: 41 Ind App 84: 23 Ind Cas 355 (PC), Bakhtawar Begum v. Husains Khanum.
 - (1877) 2 Mad 45 (45) : 3 Ind Jur 64, Keshava v. Keshara.
 - (1888) 1889 All W N 187 (189), Kamla Kuer v. Har Sahas.
 - (1889) 1889 All W N 185 (136), Maharaja of Benares v. Ssta Ram Naik.
 - (1907) 29 All 471 (473, 474) . 4 All L. Jour 375 : 1907 All W N 138, Husans Begam v. Collector of Caumpore.
 - (1886) 8 All 95 (98) : 1888 All W N 13, Raghubar Dayal v. Budhu Lal.
 - (1869) 8 Bom H C R A C 121 (123), Sstaram Dandekar v. Ganesh Gokhale. (1925) A I R 1925 Lah 529 (529) BB Ind Cas 859, Chiman Lal v. Ram Rika.
 - (1935) 158 Ind Cas 409 (409), 18 Lah 440 (441), Mohamed Hasan v. Chandu Ram.
 - (1925) A I R 1925 Cal 862 (863, 865) : 86 Ind Cas 353, Mohani Mohan v.
 - Sarat Sundari Debs. (1877) 2 Med 814 (316) : 4 Ind Jut 500, Setrucherla Ramabhadra Ratu v.
 - Vairucherla Suryanarayana Raju. (1910) 8 Ind Cas 707 (708) (Cal), Ram Tarak v. Ashulosh.
 - (1926) A I R 1926 Cudh 552 (552) . 97 Ind Cas 919, Shean Manchar v.
 - Husaini. (1925) A I R 1925 Nag 11 (14) 79 Ind Cas 870, Rama v. Wamanrao.
 - (1921) A I R 1921 Nag 22 (23) . 17 Nag L R 202 . 64 Ind Cas 730, Bala v.
 - Ghass.
 - (1918) A I R 1916 Mad 940 (940) : 30 Ind Cas S70, Chandu v. Koasa Pootars.
 - (1915) A I R 1915 Mad 425 (425) : 25 Ind Cas 576, Mer Mahamad Rowther v. Nagoor Rowther.
 - (1892) 16 Mad 486 (489) . 2 Mad L. Jour 272, Terugnana Sambanda Pandara Sannadhs v. Natlatambs
 - (1910) B Ind Cas 1068 (1069) (Mad), Muhamed Ibrahim v. Muhamed Arus.
 - (1912) 15 Ind Cas 287 (288) 39 Cal 828, Purna Chandra v. Peary Mohan. (1874) 11 Bom H C R 283 (286), Lalla Morgs v Vasuden Moreshwar
 - (1866) 2 Bom H C R 225 (231) : 1 Ind Jur (N S) 250, Salharam Narasımha
 - v. Vithu Laka Gouda.
 - (1925) 90 1nd Cas 763 (764) (Cal), Mahommed Ismail v. Sharfatulla. (1909) 2 Ind Cas 180 (181) . S1 All 300, Kalka Pratad v. Bhusyan Din.
 - (But see (1899) 10 All 602 (610) , 1888 All W N 263. Bhagwat Das v.
 - Parshad Singh. (1919) A I R 1919 Oudh 995 (386) 51 Ind Cas 890, Anant Eam v.
 - Kalua.]
- 1a. (1867) 8 Mad H O R 963 (365), Dorappa v. Malliharjunudu.
- (1906) 16 Mad L Jour 146 (147, 148), Chennaswamy Reddiar v. Krishna Reddy.

view proceeded on the ground that the right to redeem and the right to foreclose (or sell) are co-extensive and arise simultaneously; so that, if the mortgage has no right to sue for the mortgage money, the mortgage also can have no right to sue for the redemption of the mortgage. This view has been made clear by the amendment of Section 60 above referred to, so that where a mortgage deed provides a period for the payment of the mortgage money, the mortgager's right to redeem the mortgage will arise only after the expiry of the period and not before, inasmuch as before the expiry of such period, the mortgage money would not be "due" in the sense that the mortgage could sue to recover it.

In the undermentioned case, a mortgage deed provided that if the mortgager paid the mortgage money in the month of any Jeth within ten years, the mortgage would be redeemed but that if he failed to redeem within ten years, the mortgage would hecome its owner. It was held by the Allahabad High Court that the mortgage's right to redeem under the above mortgage deed arose in the first Jeth succeeding the date of the mortgage and a suit for redemption instituted more than sixty years after the first Jeth would therefore be harred by limitation. It is authmitted that the correctness of the decision is doubtful in view of the express language of Section 60 of the Transfer of Property Act under which the right to redeem accrues only on the mortgage money becomine due.

Even where the time fixed for redemption under a mortgage deed is very long after the date of the mortgage, the right of redemption cannot arise hefore, unless the clause fixing the term of the mortgage is held to be a clog on the equity of redemption, or is, for some other reason, held not binding on the mortgager.

Where no date is fixed in a mortgage deed for payment of the mortgage money, the money becomes due immediately on the execution of the deed and consequently, the right to redeem also accrues immediately on the execution of the deed.

^{(1908) 18} Mad L Jour 235 (236), Veshvendra Thirthaswams v. Veshnumurths Dhatta.

⁽¹⁹¹⁶⁾ A I R 1916 Mad 940 (940): 30 Ind Cas 370, Chandu v. Koaja

^{(1896) 20} Bom 677 (687), Bayad Abdul Hah v. Gulam Jilani.

[[]See (1912) 15 Ind Cas 237 (293) : 39 Cal 823, Purna Chandra v. Peary Mohan]

^{2. (1932)} A I R 1932 AH 155 (156): 134 Ind Cas 459, Akbar Husain v. Shah

Ahsanul Huq. (1936) A I R 1936 Oudh 130 (131) : 159 Ind Cos 1052, Har Bakhsh Singh v.

Mahabir Singh. S. (1937) A I R 1937 Att 32 (33, 31, 85): 166 Ind Cas 478, Bageswari Tewars v.

Nandoo Singh. 4. (1861) 9 Mad H O R 363 (367), Dorappa v. Mallikarjunudu.

^{(1912) 15} Ind Cas 890 (881) (All), Ram Prasad v. Jagrup.

 ^{(1018) 10} Ind Cas 291 (296): 35 All 227: 40 Ind App 74 (P C), Soni Ram v. Kanhayalal.

Article 148 Notes 18—19

Under Section 62 of the Transfer of Property Act, where a marrier mortgage is authorised to pay himself the mortgage money from the rents and profits of the property, the right of the mortgage money is so paid. In such cases, even where a term is fixed for the mortgage and the mortgage where a term is fixed for the mortgage and the mortgage is discharged out of the usufract of the mortgage and the mortgage is discharged out of the mortgage or an recover possessmen on the discharge of the mortgage debt and hence, limitation under this Article begins to run from the date when the mortgage debt is so discharged.

In the case of lekha mukhi mortgages in the Punjab, it has been held that the period of limitation for a suit for redemption runs from the date of the mortgage.

See also the undermentioned cases.

19. This Article and Article 133. — This Article applies not only to a suit against a mortgagee but also to one against an assignce of the mortgagee's rights Soppose, a mortgagee in possession of the mortgaged property transfers the property to a third person for consideration, professing in bo the absolute owner of the property, and the transferce takes possession of the property under such transfer. In such a case, notwithstanding the misrepresentation of the mortgagee-transferor, the transferce would, under the law, only get the rights of the mortgagee in the property and not rights of tuff ownership. In other words, such a transferce would only be an assignce of the rights of the mortgagee. But, in such cases, there is a special period of firmitation provided by Article 134 suppr for a six

^{(1928) 110} Ind Cas 560 (560) (All), Markunday v Mahabir Pandey,

⁽¹⁹¹⁹⁾ A I R 1919 Lah 20 (20) 51 Ind Cas 956 - 1 Lah 89, Khandu Lal v. Fasal.

^{(1925) 90} Ind Cas 763 (764) (Cal), Mahammed Isamil v Sharfatulla.

^{6. (1892) 16} Mad 486 (488). 2 Mad I. Jour 272, Terugnana Sambandha Pandara Sannadhi v. Nallatambi.

⁽¹⁹¹⁵⁾ AIR 1915 Mad 481 (489) 25 Ind Cas 797, Dorayya v. Ayyama-charyulu,

[[]See also (1928] A I R 1928 Mad 234 (236) 108 Ind Cas 277, Venkataramanamma v B. Simon]

 ⁽¹⁹¹⁴⁾ A I R 1914 P C 36 (38) 36 All 195 41 Ind App 84 23 Ind Cas 355
 (P C), Mt Bakhtauar Begam v. Husama Khanum.

⁽¹⁹¹⁸⁾ A I R 1918 Oudh 482 (434) 47 Ind Cas 161, Prag v. Mohanlal.

^{8 (1927)} A I R 1927 Lah 828 (830) . 101 Ind Cas 549, Diltu Mal v. Ilahs Baksh

⁽¹⁹¹⁹⁾ A I R 1919 Lah 20 (21) · 51 Ind Cas 956, Khandu Lal v. Fazal,

^{9. (1890)} A I R 1990 Ondh 270 (271) 122 Ind Cas 750 : 5 Luck 681, Rugghu Shiphy V. Depty Carmessumer, Shippy. (Blottagar without possinon—Provision in mortiage that if amount due is not paid by end of 1818, mortiager will like all right in property and will deliver possinon to mortgage. — Possession delivered in 1852 without paying amount due — Suit for redemption in 1929. — Suit Add Lorend V.

view proceeded on the ground that the right to redeem and the right to foreclose (or sell) are oc-extensive and arise simultaneously so that, if the mortgagee has no right to sue for the mortgage mosey, the mortgager also can have no right to sue for the redemption of the mortgager. This view has been made clear by the amendment of Section 60 above referred to, so that where a mortgage deed provides a period for the payment of the mortgage mocey, the mortgager's right to redeem the mortgage will arise only after the expiry of the period and not before, inasmuch as before the expiry of such period, the mortgage money would not be "due" in the sense that the mortgage could sue to recover it.

In the undermentioned case, a mortgage deed provided that if the mortgager paid the mortgage money in the month of any Jeth within ten years, the mortgage would be redeemed but that if he failed to redeem within ten years, the mortgages would hecome its owner. It was held by the Allahabad High Court that the mortgager's right to redeem under the above mortgage deed arose to the first Jeth succeeding the date of the mortgage and a suit for redemption iostituted more than sixty years after the first Jeth would therefore be barred by limitation. It is submitted that the correctoess of the decision is doubtful in view of the express language of Section 60 of the Transfer of Property Act under which the right to redeem accrues only on the mortgage money becoming due.

Even where the time fixed for redemption noder a mortgage deed is very long after the date of the mortgage, the right of redemption canoot arise before, nuless the clause fixing the term of the mortgage is held to he a clog on the equity of redemption, or is, for some other reason, held not binding on the mortgagor.

Where no date is fixed in a mortgage deed for payment of the mortgage money, the money becomes due immediately on the execution of the deed and consequently, the right to redeem also accuses immediately on the execution of the deed.⁵

^{(1908) 18} Mad L Jour 235 (236), Visheendra Thirthaswami v. Vishuu-

murthi Bhatta. (1916) A I R 1916 Mad 910 (910): 30 Ind Cas 370, Chandu v. Kooja

^{(1896) 20} Bom 677 (687), Sayad Abdul Hal. v. Gulam Jilani.

⁽See (1912) 15 Ind Cas 287 (288) : 39 Cal 828, Purna Chandra v. Peary Mohan.]

 ⁽¹⁹³²⁾ A I R 1932 All 155 (156): 134 Ind Cas 459, Akbar Husain v. Shah Ahsanul Huq.

⁽¹⁹³⁶⁾ A I R 1936 Oudh 130 (181) : 159 Ind Cas 1052, Har Bakhsh Singh v. Mahabir Singh.

^{3. (1937)} A I R 1937 All 32 (33, 34, 35) - 166 Ind Cas 473, Bageswari Tewari V. Nandoo Singh.

^{4. (1867)} S Mad H C R 363 (367), Dorappa v. Mallikarjunudu.

^{(1912) 15} Ind Cas 880 (681) (All), Ram Prasad v. Jagrup.

 ^{(1913) 19} Ind Cas 291 (296) · 35 Am 227 : 40 Ind App 74 (P C), Soni Ram v. Kanhanyalal.

Article 148 Notes 18-19

Under Section 62 of the Transfer of Property Act, where a usufructuary mortgageo is authorised to pay himself the mortgage money from the rents and profits of the property, the right of the mortgage recover possession of the property accrues when the mortgage money is so paid. In such cases, even where a term is fixed for the mortgage and the mortgage is discharged out of the usufruct of the mortgaged property before the expiry of such term, the mortgagor can recover possession on the descharge of the mortgage debt and hence, limitation under this Article begins to run from the date when the mortgage debt is so discharged.

In the case of lekha mukh: mortgages in the Punjab, it has been held that the period of limitation for a suit for redemption runs from the date of the mortgage.*

See also the undermentioned cases 9

19. This Article and Article 134. — This Article applies not only to a suit against a mortgagee but also to one against an assignce of the mortgage's rights. Suppose, a mortgagee in possession of the mortgaged property transfers the property to a third person for consideration, professing to he the absolute owner of the property, and the transfere takes possession of the property under such transfer. In such a case, notwithstanding the misrepresentation of the mortgagee-transferor, the transferee would, under the law, only get the rights of the mortgagee in the property and not rights of full ownership. In other words, such a transferee would only be an assignee of the rights of the mortgagee. But, in such cases, there is a special period of limitation provided by Article 134 supra for a suit

(1928) 110 Ind Cas 560 (560) (All), Markunday v. Makabir Pandey

(1919) A I R 1919 Lah 20 (20) . 51 Ind Cas 956 1 Lah 89, Khandu Lal v. Fazal.

(1925) 90 Ind Cas 763 (764) (Cal), Mahammed Isamil v. Sharfatulla.

G. (1892) 16 Mad 486 (488): 2 Mad L Jour 272, Terugnana Sambandha Pandara Sannadhev. Nallafambe.

(1915) A I R 1915 Mad 481 (483) : 25 Ind Cas 797, Dorayya v. Ayyama-charyulu,

[See also (1928) A I R 1928 Mad 234 (236) 108 Ind Cas 277, Venkataramanamma v B. Simon]

(1914) A I R 1914 P C 36 (38) 36 AR 195 41 Ind App 84 23 Ind Cas 355
 (P C), Mt. Bakhtawar Begam v Husants Khanum.

(1918) A I R 1918 Oudh 432 (434) · 47 Ind Cas 161, Prag v. Mohanlal

8 (1927) A 1 R 1927 Lah 828 (830) : 101 Ind Cas 549, Dillu Mal v. Ilah:

(1919) A I R 1919 Lah 20 (21) . 51 Ind Cas 956, Khandu Lal v. Fazal,

for possession against the transferee, and this Article will not, therefore, apply.

The view is sometimes expressed that where a mortgagee transfers the mortgaged property professing to be the owner thereof, the transferee is not a transferee of the mortgagec-interest and hence, this Article does not apply to a snit for possession or redemption against such a transferee. It is enhmitted that such a view is not correct, for whatever the professions of the mortgages, the transferee can get in such a case only the rights of a mortgagee. The reason for the non-applicability of this Article to a suit against such a transferee is not that he is something more than a transferee of the mortgagee-interest in the property but that there is a different Article which specially provides for such cases. In the undermen. tioned case,2 it was observed that the object of Article 134 was "to cut down the period available to the mortgagor under Article 148 and to compel him to watch the conduct of the mortgagee and intervene on a transfer, thus making the transfer a cause of action which otherwise did not exist." It is submitted, with respect, that the view as to Article 134 creating a cause of action which otherwise did not exist is not correct. The Limitation Act does not create a cause of action. The object of the Act is only to provide the period of time before the expiry of which the cause of action must be enforced. (See Section 3 Note 2 supra.)

A transferee from a mortgagee, who has professed to act as the full owner of the property, gets at least the rights of the mortgages in the property. Hence, although Article 134 speaks of a suit for possession, where anything remains due on the mortgage, the Article can only mean a suit for possession on redemption of the mortgage, for the simple reason that a suit for possession simpliciter without

Article 148 as right to redeem accrued on execution of mortgage—Suit was harred even if the right accrued in 1852]

· · · · · · · · (Mort-

ion and iey, the

land would be released—No date for redemption fixed in deed — Held on construction of deed that right of redemption did not accrue till the mortgages got possession under the deed)

- (1926) A I R 1926 Oudh 547 (548): 29 Oudh Cas 853: 97 Ind Cas 874: 1 Luck 428 (F B). Ses Ram v. Nanbullah.
- (1921) A I R 1921 AH 889 (390, 891); 43 AH 164; 61 Ind Cas 546, Mt. Ram Prary v. Budh Sen.
- 2. (1921) A I R 1921 Mad 272 (276) . 44 Mad 951 : 69 Ind Cas 734, Narayana-swamy Naicher v. Persasuamy Odayar.
- (1921) A I R 1921 Msd 272 (275); 41 Msd 931; 69 Ind Cas 731, Narayanaswamy Naucker v. Persaswamy Odayar.
- See (1927) A I R 1927 All 807 (310): 102 Ind Cas 135, Lakhmi Das v. Mt. Badla, (Article 134 applies to suit for redemption.)

Article 148 Notes 19—20

offering to redeem the mortgage will not lio at all against the transferee io such cases. The cause of action for such a suit against the transferee is the same as that against the mortgage himself, and such cause of action is not accelerated simply because the mortgage has transferred bis rights to another, professing to have full rights to the mortgaged property. Hence, where the right to redeem the mortgage has not arisen, the mortgager cannot sue the mortgage in the professed exercise of rights of ownership over the property.

Suppose, the right to redeem the mortgage arises after the mortgage to the to know of the transfer by the mortgage (the time mentioned in Article 134 as the starting point of limitation under the Article). The question arises whether Article 134 will apply to such cases. There does not seem to be any decided case on this point. But it is conceived that Article 134 will not apply to such cases. The reason is that limitation cannot bego to run before the accrual of the cause of action, and the Articles in the Limitation Act must be ead subject to this principle, so that if at the time mentioned in the third column of any Article the cause of action for a suit (falling within the description contained in the first column) has not arisen, the Article must be held icapplicable to the case. (See Notes to Section 9 ante.) It is conceived that in such a case Article 148 will apply.

Where, in a suit against a transferre from a mortgage for the recovery of the mortgaged property, the defeedant contends that the suit is governed by the shorter period of limitation under Article 134 and not by this Article, it is for the defeedant to prove the facts which would bring the case within Article 134.5

20. This Article and Article 126.—Where a Hindu son sues to set aside a mortgage of joint family property executed by his father and not to redeem the mortgage, the Article applicable is Article 126 supra and not this Article.

Where a Hindu executes a nsufructuary mortgage of joint family property and then sells the equity of redemption to the mortgage, the sons will lose their right to the property altogether if they do not sue to set aside the sale within the period of twelve years under

⁽¹⁹²⁶⁾ A I R 1926 Oudh 547 (548) 29 Oudh Cas 353 · 97 Ind Cas 574 · I Luck 423 (F B), Srs Eam v Naphullah. (Do)

[[]But see (1925) A I R 1925 Rang 140 (142) 2 Rang 561 · 84 Ind Cas 984, Ma Myat Gytv. Ma Ma Nyan (Article 184 does not apply to suit for redemption — Submitted, decision is not correct)]

^{5. (1881) 1881} All W N 122 (122), Kamta Prasad v. Bahar Als

 ⁽¹⁹²¹⁾ A I R 1921 Oudh 196 (197, 198) 21 Oudh Cas 830 : 64 Ind Cas 757, Cholbey Singh v. Hardeo Singh.

Artiole 148 Notes 20-21. Article 126. Hence, where the sons have not sued to set aside the sale within the period of twelve years under Article 126, they cannot sue to redeem the property, taking advantage of the longer period of limitation allowed by this Article.²

21. Suit by puisne mortgages for redemption of prior mortgage. — This Article applies to a suit for redemption of a mortgage by whomsoever such suit may be brought. In other words, the Article is not confined to suits by the original mortgagor. Thus, the Article applies to a suit by a puisne mortgage to redeem a prior mortgage.

Where a prior mortgagee sues to enforce his mortgage without implicating the puisne mortgagee and the latter thereafter sues to redeem the prior mortgage, there is a conflict of decisions as to whether this Article will apply to the suit. One view is that this Article will apply to such a suit and the other view is that such a suit is really one to enforce the pnise mortgage and so is governed by Article 132 supra and not by this Article. It is submitted that the latter view is not correct, there being a clear distinction between the puisne mortgagee's right to enforce his own mortgage and his right to redeem a prior mortgage.

2. (1928) 112 Ind Cas 151 (152) (Oudh), Kaslash Singh v. Balbhaddar Singh.

- (1933) A I R 1933 Lab 503 (504): 14 Lab 596: 142 Ind Cas 805, Sundar Das v. Bels Ram.
 - (1935) A I R 1935 Oudh 189 (140): 10 Luck 531 : 153 Ind Cas 808, Ram Adhar v. Shanlar Balhsh Singh.
 - (1920) A I R 1929 Cal 609 (611): 119 Ind Cas 185: 57 Cal 704 (F II), Sagamath Molla v. Anisadin Molla. (Punsa mortgage suing on his mortgage without implicating the prior mortgages and purchasing the property himself can sue the prior mortgage and purchasing the such a suit this Article will apply).
 - Nag 367: 172 Ind Cas 289,
 (Prior mortgages fore-losing
 by pulsine mortgages within
 sixty years not barred though after twelve years from prior mortgages
- getting possession under forcelosure decree.) 2. (1934) A I R 1934 All 946 (947) : 153 Ind Cas 664, Narotam Das v. Sanwal
 - Das. (1923) A I R 1923 AH 271 (273) : 79 Ind Cas 498 : 45 AH 268, Priya Lal v.
 - (1923) A I R 1923 All 211 (213) : 49 Ind Cas 436 : 45 All 206, Fright Date 1.
 - (1926) A I R 1926 Pat 337 (339): 5 Pat 513: 94 Ind Cas 291, Ramphars Koer v. Kashi Nath Sahas.
 - (1937) A I R 1937 Nag 205 (207) . I L R (1937) Nag 367 : 172 Ind Cas 299, Mt. Rambunuarbas v. Mt. Chilia Bai.
- (1926) A I R 1926 Cal 550 (560): 91 Ind Cas 719, Nel Madhab Mahapatra v. Joy Gopal Mahants.
 (1909) 5 Ind Cas 877 (578) (Cal), Nelhiram Bandopadhya v. Sarbessur
 - Bisuas. (1925) A I R 1925 Mad 76 (77, 78): 84 Ind Cas 201, Lakshmanan Chelliar v, Sellamuthu Naucker.

22. Suit by execution purchaser of equity of redemption. — Where the equity of redemption under a usefructuary mortgage is sold in execution of a decree against the mortgage, a suit by the purchaser in execution for redemption and possession of the mortgaged property is governed by this Article and not by Article 137 supra.¹

- 23. Burden of proof.—The burden of proving that the mortgage is a subsisting one and that the suit for redemption is not barred by limitation, is on the plaintiff.¹
- 24. Laches of mortgagor.—The laches of a mortgagor in taking no steps for many years to enforce his alleged rights may afford

Note 22

 (1889) 1889 All W N 135 (135, 136), Maharajah of Benares v. Sila Ram Naik.

Note 23

- (1938) A I R 1933 All 21 (24) . 141 Ind Cas 91 51 All 975, Jauhars v. Tunday.
 - (1916) A I R 1916 All 201 (205) 36 Ind Cas 452 38 All 540, Khiali Ram v.
 - (1914) A I R 1914 All 512 (513) 25 Ind Cas 353, Frank Hay v. Rafsuddin. (1913) 20 Ind Cas 29 (80) (All), Ganesh: Lal v. Basant: Lal.
 - (1889) 11 All 438 (443) : 1889 All W N 155, Parmanand Misr v. Sahib Ali.
 - (1886) 8 All 295 (800) . 1886 All W N 93, Nura Bibs v. Jagat Narain.
 - (1898) 1893 All W N 39 (39), Rans v. Amer Bakhsh. (1905) 1905 All W N 14 (15): 2 All L Jour 62, Musafir Ras v. Mt. Lagan
 - Barta Kuar. (1935) A I R 1935 Lah 515 (516) . 155 Ind Cas 576, Sher Mohammed v.
 - Karam Chand (1925) A I R 1925 Lah 632 (633) · 89 Ind Cas 788, Ahmad Khan v Muzzafer
 - (1924) A I R 1924 Lah 484 (185) . 78 Ind Cas 617, Peroze Khan v. Kanhiya Ram.
 - (1923) A I R 1923 Lah 219 (220) · 71 Ind Cas 577, See Ram v. Matwala
 - (1919) A I R 1919 Lah 20 (22) . 1 Lah 89 51 Ind Cas 956, Ehandu Lal v. Fazal.
 - (1894) 1894 Pun Re No 53, Ghulam Hassan v Haji Muhammad.
 - (1893) 1893 Pun Re No SS, Ralia Ram v Radha Ram
 - (1902) 26 Mad 34 (36) 12 Mad L Jour 101, Ittappan Kuthiravattat Nayer v. Nanu Sastry.
 - (1913) 20 Ind Cas 63 (64, 65) (Oudh), Gajraj Singh v. Muhammad Baker Ali Khan.
 - (1913) 18 Ind Cas 229 (232) (Oudh), Sarju Prasad v. Manni Lal-
 - (1917) A I R 1917 Oudh 124 (125) . 42 Ind Cas 119, Dadar Husain v. Gayaprasad.
 - (1934) A I R 1934 Pat 615 (616) 153 Ind Cas 761, Mt. Khiro Kuer v. Syed Noorul Hussain.
 - (1921) 63 Ind Cas 490 (492) (All), Harsmurat v Famhst.
 - (1926) 95 Ind Cas 945 (945) (Oudh), Binda v. Sankata Prasad.
 - (1913) 20 Ind Cas 29 (30) (All), Ganeshs Lal v. Basants Lal.

Article 148 Notes 22—24 Article 148 Notes 24—27 evidence against the existence of those rights, but cannot estop him from asserting them, if they do exist, at any time within the period of sixty years allowed by this Article.¹

See also Note 40 to Section 3, ante.

- 25. Effect of har of limitation.— Where a suit for recovery of possession of the mortgaged property from the mortgagee is barred under this Article, the right of the mortgager to the property is extinguished under Section 28 ante, and the mortgagee becomes the owner of the property.
 - Special or local law. See the undermentioned decisions.
- 27. Punjab Redemption of Mortgages Act, 2 of 1913 Dismissai of application for redemption under Effect, See under Note 2 to Article 14 supra.

Note 24

- (1875) 23 Suth W R 99 (101): 14 Beng L R 885 · 2 Ind App 48 . 8 Sar 419:
 8 Suther 61 (P O), Juggernath Sahoo v. Shah Mahomed Hossein.
 - (1896) 23 Cal 228 (236, 237) : 22 Ind App 183 : 5 Mad L Jour 261 : 6 Sar 649 (P C), Kishori Mohun Roy v. Ganga Bahu Debi.

Note 25

- (1925) A I R 1925 Bom 839 (840); 87 Ind Cas 609, Indura: Bhaura: v. Shielal Nabhubhai.
 - (1933) A I R 1933 All 21 (24): 141 Ind Cos 91: 54 All 975, Jauhars v.

- (1882) 6 Bom 734 (736), Babajs v. Veihu. (Under the Dekkan Agriculturists Relief Act, XVII of.1879, the mortgager may redeem before the expirate of the term.)
 - (1930) A I R 1930 Ondh 270 (271): 122 Ind Cas 700: 5 Luck 684, Rugghu Singh v. Deputy Commissioner, Sitapur. (In order to take advantage of Section 6 of the Ondh Eatates Act the mortigage must have been executed on or after 19th February 1844, and then too the advantage is available in two cases only namely, in mortgages which fixed no term within which the property comprised might be redeemed or mortgages which fixed the term within which the property comprised might be redeemed if anch term has not expired before the 19th February 1856.)
 - (1927) A I R 1927 Ondh 457 (464) 105 Ind Cas 93, Suraj Bakhih v. Ganga Bakhih. (A suit for redemption resting on an instrument of mortgage of the year 1849 in which no term was fixed for redemption, or if any

Article 149

149.* Any suit by or on behalf of the Secretary of State for India in Council, the Secretary of State, the Crown Representative, the Central Government or any Provincial Government, except a suit before a Federal Court in the exercise of its original jurisdiction

When the period of limitation would begin torununder this Act against a like suit hy a private person.

Synopsis

- 1. Legislative changes.
- 2. Scope of Article.
- 3. Applicability of Limitation Act to Government -General.
- 4. Suit by or on behalf of the Government Illustrative cases.
- 5. Suit by manager of religious endowment.
- 6. Suit by Municipality.
- Article not applicable to suit by person deriving title from Government.
- 8. Resumption or assessment of lakhiraj grants—Right of Government, whether extinguished by bar of limitation.
- Acquisition of title by adverse possession against Government.
- 10. Special or local law.
- 11. "Private person."
- 12. Acquisition of easements against Government.

Other Topics

Adverse possession against Oovernment—Onus of proofe., See Note 9, Pts. 4 to 6
Applications and appeals by Government—Article not applicable See Note 2, Pt. 1

Suits against Government—Article not applicable See Note 2, Pt. 1

Act of 1877

149 —Any suit by or on Sixty years behalf of the Secretary of State for India in Council begin to run under this Act against a like suit by a private person

Act of 1871

150 — Any sant in the name of the Sixty years. When the right to sue Secretary of State for India in Council. Act of 1859

See Note 1, Legislative Changes. The Bengal Regulation referred to in the Note was repealed by Act 8 of 1868.

Article 149 Notes 1 ---2

1. Legislative changes.

- Under some of the Regulations that were in force prior to the Act of 1859, such as the Bengal Regulation 2 of 1805, suits in regard to public rights were exempt from the ordinary period of limitation and a special period of limitation of sixty years was provided in regard to such suits.¹
- 2. Section 17 of Act 14 of 1859 provided as follows :-

"This Act shall not extend to any public property or right, nor to any suits for the recovery of the public revenue or for any public claim whatever, hat such suits shall continue to be governed by the laws or rules of limitation now in force."

- 3. Artole 150 of the Act of 1871 provided for suits "in the name of the Secretary of State for India in Council." The period of limitation for such suits was sixty years and time hegat to run under the Article from the date when the right to sue accurated.
- 4. In Article 149 of the Acts of 1877 and 1908, the words "in the name of the Secretary of State for India" wore replaced by the words "by or on behalf of the Secretary of State for India." The starting point of limitation was altered as the time when the period of limitation would begin to run under the Act against a like suit by a private person.
- 5 The words "the Secretary of State . . . Provincial Government" were added by the Government of India (Adaptation of Indian Laws) Order, 1937. The words "except a suit before a Federal Court. . . . original jurisdiction" were added by Act 14 of 1937.
- Scope of Article.—The Article applies only to suits by or on behalf of the Government. It does not apply to applications and

Article 149 -- Note 1

See the following cases decided under such Regulations
 (1860) G Suth W R P C 3 (9) * 2 Moo Ind App 300 (P C), Jevan Doss Sahoo
 Naha Kubercood-den. (Bengal Regulation 2 of 1805, Sec. 2.)

v Shah Kubeerood-deen. (Rengal Regulation 2 of 1805, Sec. 2.) (1868) 10 Suth W R 76 (77). 1 Beng L R A C 34, Assoo Meah v. Rojoo Meah. (Case decided under S. 17 of Act of 1859 under which the Regulations

in force at the data of the Act continued to apply.)
(1872) 17 Suth W R 557 (558), Shib Ram Doss v. Sudanund Surmah. (Do.)
(1873) 0. Suth W R 931 (931 939) Housen Ruleby America Florican

(1878) 20 Suth W R 231 (231, 232), Hossem Duksh v. Ameena Khatoon. (1874) 8 Mad II O R 40 (43), The Callector of South Arcot v. Thathacharry. (Regulation 2 of 1805)

(1866) 5 Suth W R 115 (116), Collector of Bunggore v. Prosunna Coomar Tagore.

(1846-51) 4 Moo Ind App 466 (496, 497) 1 Sar 385 (P.C), Raja Mahlab Chund Bahadoor v. Government of Bengal.

(1866) 5 Suth W R 136 (136), Bromanund Gossain v. The Government.

(1870) 14 Suth W R 170 (170), Rughoomath Surmah v. Gobind Chunder Roy. (1872) 17 Suth W R 430 (431), Shak La Hahomed v. Lalla Brij Kishore. (1868) 9 Suth W R 153 (160), W. Fergusson v. The Government.

[See also (1921) A I R 1921 Oudh 89 (90) : 61 Ind Cas 671 : 24 Oudh Cas 77, Secretary of State v. Mohammad Casm.]

Article 149 Notes 2—3

appeals by Government.\(^1\) But it applies to all suits by the Government,\(^2\) for example, to summary suits by the Government under Section 9 of the Specific Relief Act.\(^2\) The Article applies only to suits by or on behalf of the Government. Suits against the Government are not within the Article \(^1\)

3. Applicability of Limitation Act to Government—General.— The question has sometimes been raised whether, apart from the provisions which expressly or by necessary implication are declared applicable to the Government, the provisions of the Limitation Act apply to the Government. In Appayar Collector of Vizagapatam, where the question was whether Article 178 of the Act of 1877 (Article 181 of the Act of 1909) applied to applications by Government, the High Court of Madras observed as follows:

"We are of opinion that the Government is not entitled to any exemption from the provisions of the Lamitation Act relating to applications. If the maxim on which the Counsel for the Crown relies applies to this country—and the Crown is not bound by the provisions of any Act unless they are expressly declared hinding on the Crown—it may be inferred from the circumstance that this Act contains provisions preserbing limitation to the Government for the institution of suits and presentation of criminal appeals, that the Legislature contemplated that the Crown should be subject to the provisions of the Act and should enjoy a privilege to the extent expressed and no further—expression facil cessare leaction."

In Venuba; v The Collector of Nasak, at was held that the period of limitation for an application for execution by the Government was the same as the period of himitation for a similar application by a private person. The High Court of Bomhay in the above case observed as follows.

"We think that the right of Government to recover court-fees under Section 309 is subject to the same period of limitation as

Note 2

- (1881) 4 Mad 155 (156, 157), Appayya v Collector of Vizagapatam
 - (1926) A I R 1926 Cal 1064 (1064) 53 Cal 561 . 99 Ind Cas 334, Mahabunnessa Bib, v Secretary of State
 - (1874) 22 Sath W R 512 (512) (F B), Collector of Beerbhoom v Sreehury Chucherbutty
 - (1883) 7 Bom 552 (Note) (553), Venubas v Collector of Nasik
- 2. (1915) A I R 1915 Betn 197 (200) 40 Bom 166 . 33 Ind Cas 429, Manilal Gangadas Desar v Secretary of State.
- (1925) A I R 1925 Sind 275 (279) 87 Ind Cas 1002, Secretary of State v. Dinshaw Nacrojs
- 4. (1895) 19 Mad 165 (166), Secretary of State v Bapanamma Garu
- (1930) A I R 1930 Mad 679 (680, 682, 683) 125 Ind Cas 545, Secretary of State v District Board of Tanjore

Note 3

1. (1881) 4 Mad 155 (156, 157).

2, (1883) 7 Pom 552 (552) (Note)

Article 149 Note 3

the night of a sobject to enforce a decree or order would be. The Legislature in passing the Limitation Act of 1871, which is applicable to this case, where it intends that the Government should have a langer period than the subject, has been careful expressly to say so: as, for iostacce, in Article 150 of Schedulo 2, where the period assigned to smits brought by the Secretary of State is sixty years from the time of the accrual of the cause of action; but the Legislature makes no difference between Government and its subjects in the cases of appeals or applications; see Govind Lakshman v. Narayan Moreshvar, 11 Bom. H. C. Rep. 111."

In The Secretary of State v. Mathurabai,³ the High Court of Bomhay held that the role in Eogland that the Crown is oot included in an Act unless there be words to that effect is equally applicable in India and that therefore the provisions of Section 26 of the Limitation Act of 1877 did not apply to the acquisition of easements against the Government. In distaguishing the decision in Venubai v. Collector of Nasik (above referred to) the High Court observed as follows:

"In Special Appeal No. 7 of 1877, Venubai v. The Collector of Nasik (referred to in the note to L. L. R. 7 Bem. 552) the above Act came under the consideration of Westropp, C. J., and Melvill, J., who held that the period for execution in the case under Act 9 of 1871 was the same for Government as for the subject, oo the ground that the express provision for a longer period of limitation in favour of Government, in case of suits, showed it was intended that Government should be bound by the ordinary period of limitation in the case of executions. But this inference cannot be extended to Section 26 of the Limitation Act which relates to an entirely different matter from the limitation of soits, viz., to a branch of substantive law and the creation of rights by the enjoyment of them, unless indeed the more mention of the Crown in an Act he held to have the effect of making all its provisions applicable to the Crown. That this is not so, the decision of the Appeal Court in Ex parte Postmaster-General; In re Bonham, L. R. 10 Ch. D. 595 at page 601, where the applicability of the Bankruptcy Act to the Crown was disallowed, is an anthority in point."

In the undermentioned cases it was held that the Collector can take action under Section 3 of the Bombay Blagdari Act 5 of 1869 at any time and that his action is not subject to any rule of limitation. In one of the above cases the above view was based on the ground that the Collector acted as a representative of the Crown and the

^{3 (1889) 14} Bom 213 (218). (Following 1 Bom 7.)

[.] Dawaji.

Article 149 Notes 3—5

maxim "Nullum tempus aut ocurrit reg!" (No time or place affects the King or the rights of the Crown) was relied on for the view that there was no limitation for the proceeding by the Collector.

Reference may also be made to the judgment of Bhashyam Iyengar, J., in Bell v. Municipal Commissioners of Madras, and which he comes to the conclusion that the Government is not exempt even from taxing statutes passed by the Indian Legislatures, unless the very nature of the tax is such as to make it inapplicable to the Government.

4. Suit by or on behalf of the Government.— Illustrative cases.—Where a Stato Railway is managed by a Railway Company as managing agents under the Government, a suit by the Railway Company in respect of land belonging to such State Railway is one on behalt of the Government and as such is governed by this Article.¹

Certain land was acquired by the Government under the Land Acquisition Act for the purposes of a Railway, but before it was handed over to the Railway Company the defendant entered into possession of the land It was held that the suit against the defendant for the recovery of the land must be by the Secretary of State and not by the Railway Company and that it would be governed by this Article.²

5. Suit by manager of religious endowment. — Before the passing of the Religious Endowments Act, 20 of 1653, religious endowments were under the management of the Government and hence, a suit by the manager of an endowment was treated as a suit by an officer of the Government brought on behalf of the Government so as to be governed by the longer period of limitation applicable to such suits. But, since the passing of the Religious Endowments Act of 1653 under which the management of religious endowments has been taken away from the hands of the Government, a suit by the manager of a heligious endowment cannot be treated as a suit by an officer of the Government and as brought on behalf of the Government and hence, the longer period of limitation applicable to suits by or on behalf of the Government will not apply to such suits?

Note 4

^{6 (1901) 25} Mad 457 (480) 12 Mad L Jour 208

 ⁽¹⁹³⁶⁾ A. I. R. 1936. Pat. 362 (369). 163. Ind. Cas. 525, Bengal. North-Weslern. Radinay Co. Ltd. v. Jank. Pershad.

^{2 (1937)} A I R 1937 Pat 508 (570) 17I Ind Cas 823, Seetharam v. Secretary of State

Note 5

^{1 (1866) 6} Suth W R P C 3 (9) 2 Moo Ind App 890 (P C), Jewan Diss Sah v v Shah Kubeerooddeen

 ^{(1893) 20} All 482 (488, 489)
 1898 All W N 123 (F B), Behars Lal v Md. Muttahi
 (1872) 17 Suth W R 430 (431), Shashh Laul v Lalla Bry Kishore

^{(1872) 17} Suth W.R. 430 (431), Sharka Laut V. Lauta Brij Kinaore.
[Sec (1903) 27 Bom 500 (510) 5 Bom L.R. 503, Sajun Lul² richnz v.
Kan Hussen

Article 149 Notes 6 - 7

6. Suit by Municipality. - A suit by a Municipal Committee is not a suit by or on behalf of the Government and hence is not governed by this Article.1 Thus, this Article will not apply to a suit by a Municipal Corporation for recovery of a certain land as forming part of a highway, title to which is vested in the Corporation by statute.2 But, where Government land has been entrusted to a Municipality for management and the Municipality sues in respect of such land, the suit is one on behalf of the Gevernment and is governed by this Article.3

See also Notes under Article 146 A. ante.

.. .

7. Article not applicable to suit by person deriving title from Government. - This Article applies only to suits by or on behalf of the Government It does not apply to a suit by a person deriving title from the Government 1

Illustrations

1. A purchases from the Government certain land which, at the time of the purchase, has been in the possession of B adversely against the Government for more than twelve years. A's suit for possession against B is governed by Article 144 and not by this Article and is barred as not being within twelve years of the commencement of the adverse nossession.2

Note 6

v. Sarangapans Mudaliar. Cas 158 (162) : 38 Mad 6, Council.

- 2. (1895) 19 Mad 154 (156), The Municipal Commissioner v Sarangapani Mudahar
- 3. (1934) A I R 1934 Lah 960 (961) . 153 Ind Cas 961, Labha Singh v. Municipal Committee, Amritsar.

Note 7

- 1 (1924) A I R 1924 Cal 394 (394): 81 Ind Cas 675, Ananda Mohan Roy v. Kina Das (1926) A I R 1926 Mad 1155 (1157, 1159) : 97 Ind Cas 253, Venkatasurya
 - narayana v. Venku Naidu. (1917) A I R 1917 Lah 201 (201) : 39 Ind Cas 971, Moolchand v. Amar Nath.
 - (1909) 2 Ind Cas 314 (314, 315) (Mad), Madhara Gowdu v Lokanath Patro.
 - (1910) 6 Ind Cas 392 (391) (Cal), Nawab Bahadur of Murshidabad v. Gopnath Mandel
 - (1906) 30 Mad 245 (248) . 17 Mad L Jour 174, Kuthaperumal Rajah v. Secretary of State
 - (1904) 28 Mad 503 (506, 507) . 15 Mad L Jour 416, Sankaran Nambudrs v. Veetil Thalakat Muhammad.
 - (1895) 19 Mad 154 (156). The Municipal Commissioner v. Sarangapani Mudahar.
 - (1875) 24 Suth W R 64 (65), Boords Roy v. Pandil Bunsee Thakoor.
 - (1872) 17 Suth W R 377 (377), Brindabun Chunder Sirear v. Bheefal Chunder Bisicas [But see (1881) 8 Cal 230 (235, 236) : 10 Cal L R 41, Kodashbashini
- Dass v. Golulmons Dass.] 2. (1924) A I R 1924 Cul 394 (394) : 81 Ind Cus 675, Annada Mohon Foy v. Kena Das. (In such a case the purchase does not give a fresh starting point of limitation.)

- Article 149 Notes 7-8
- 2. A obtains a lease of certain land from the Government. He is then deprived of possession of the land by B. A's suit for possession against B is not governed by this Article.8
- 3. A was in possession of certain land which belonged to the Government, adversely to the Government The Government took steps to remove him from possession and actually removed him from possession and itself entered into possession Thereafter it granted the land to B A then such B for possession on the ground that he had acquired a prescriptive title to the land and that he bad been wrongly deprived of possession. It was held that he could not succeed unless he proved that at the time when he was deprived of possession of the land by the Government be had been in adverse possession against the Government for sixty years The reason is that in such a case, the question is whether a suit by the Government would have been barred by limitation and not whether a suit by the transferce from the Government would have been so barred at the time when A was deprived of possession of the land 4

The mere fact that in a suit for possession of land by a transferee of such land from the Government, the latter is somed as a co-plaintiff will not make this Article applicable to the suit by the transferce 5 But, where the Government is entitled to sue for the restoration of possession of the land to the transferee, the suit by the Government for such restoration will be governed by this Article. although a suit by the transferce bimself for possession will not be governed by this Article. Hence, in such a case, if the Government is made a co-plaintiff in the suit by the transferee, the suit, so far as the Government is concerned, will be governed by this Article, though this Article will not apply so far as the transferee is concerned

8. Resumption or assessment of lakhiraj grants - Right of Government, whether extinguished by bar of limitation. -See the undermentioned cases 1

(1926) A I R 1926 Mad 1155 (1157) 97 Ind Cas 253, Venkata Suryanarayana v Venku Naidu

3. (1904) 32 Cal 129 (139) 31 Ind App 203 6 Bom L R 765 1 All L Jour 585 S Cal W N 809 8 Sar 698 (P C), Jagendra Nath Roy v Hemanta Kumarı Dası

(See also (1915) A I R 1915 Sind 4 (5, 6) , 30 Ind Cas 13 9 Sind L R 1, Larachs Munscrpality v Shamoo Ladha]

4 (1927) A I R 1927 Mad 1083 (1084) 105 Ind Cas 202, Maniappa Udayan v. Sabarathy Asars

5 (1905) 28 Mad 505 (506, 507) 18 Mad T Taman Co. Taman North day Y. Vettel Thalakat Md (See also (1867) 11 Mo

Collector of the 24 Parghanas] G. (1872) 18 Suth W R 180 (191), Petumber Dey v Juggannath Eoy

Note 8

1 Suther 676

Article 149 Note 9

9. Acquisition of title by adverse possession against Government. —A title to immovable property can be acquired by adverse possession against the Government in the same way as such title can he acquired against the Government must prove that the adverse possession has extended for a period of sixty years or more. This is so even where the suit is not one by the Government but one against the Government. Thus, where the plaintiff sues the Government for a declaration that he has acquired a title against the Government by adverse possession for the statutory period, he must prove that his possession has extended for a period of sixty years.³

Where a person claims title by adverso possession against the Government, the harden is on him to prove such possession for the full period of sixty years. Proof of adverse possession for a shorter period will not shift the onus to the Government to show that the possession had not continued for the full period of sixty years. The contrary view taken in the undermentioned cases cannot be regarded

```
(1934) A I R 1934 Mad 147 (151): 57 Mad 501: 154 Ind Cas 990, Thiruten-
katacharyulu v. Secretary of State. (Do.)
```

(1891) 8 Cal 230 (235, 236, 237) : 10 Cal L R 41, Kailashbashini Dossee v. Goccolmon: Dosee. (Right barred after 60 years)

(1935) A I R 1935 Cal 363 (374) · 62 Cal 346 · 159 Ind Cas 98, Raj Krishna v. Baraban; Coal Concern Ltd. (Do.)

Note 9

```
    (1885) 9 Mad 285 (307), Swasubramanya v. Secretary of State.
    (1890) 9 Mad I. Jour 141 (142), Adashalam Katha Nadan v. Kandasamy
```

Pellat.
(1892) 19 Cal 312 (321): 19 1nd App 60: 6 Sar 113 (P C), Secretary of State
v. Durbrjoy Singh.

(1911) 9 Ind Cas 765 (767): 35 Bom 182, Ranchhodlall v. Secretary of State. (1921) A I R 1927 Mad 456 (457): 101 Ind Cas 96, Secretary of State v. Muthukumara Pillat.

Cal L Jour 460.

ta Deo v. Secre-(1924) A I R 1924 P O 150 (151): 5t Ind App 257: 47 Mad 572: 80 Ind Cas S35 (P C), Ambu Naw v. Secretary of State. (A person must prove

continuous possession for full sixty years to acquire title against the Government.] 3. (1926) A I R 1936 Lah 437 (438) : 7 Lah 210 : 96 Ind Cas 117, Abdul Wahab

v. Secretary of State

of State v. Sree-

(1925) A I R 1925 Mad 780 (785, 786). 49 Mad 570 : 91 Ind Cas 180, Krishna v. Singararelu

(1931) A I R 1921 Bom 177 (179): 45 Bom 789: 61 Ind Cas 440, Vasta Balteant v. Secretary of State

(1929) A I R 1929 Mad 411 (442, 443) : 119 Ind Cas 490, Jayaram Naidu v. Secretary of State.
5. (1892) 15 Mad 315 (318) : 2 Mad L Jone 159, Secretary of State v. Barotis

Haje (1910) 5 Ind Cas 892 [833] : 33 Mad 1, Cheldani Rama Rao v. Secretary of State. as good law in view of the decision of the Privy Council in Secretary of State for India v. Chellikani Rama Rao.

As regards the essentials which will make a person's possession adverse to the Government, see Notes under Article 144. See also the undermentioned cases, dealing with adverse possession of land in cantonments.

10. Special or local law. - The Article is subject to the provisions of Section 29 ante under which, if a different period is fixed by a special or local law, such period must apply in preference to the neriod laid down in the Articles in the Schedule. Thus, in the undermentioned case1 it was held by the Judicial Commissioner's Court of Sind that a suit by the Government against the Karachi Municipality in a matter covered by Section 167 of the Bombay District Municipalities Act of 1901 was governed by the six months' period of limitation under that Section and not by this Article.

11. "Private person." - In In the matter of the Indian Stamp Act 1899.1 the Bombay High Court observed as follows

"... the expression 'private person' is not a term of art it must be construed. I think, with reference to the context in which it appears 'Private person' may be used in contradistinction to an 'official person' or to a Government servant, it may have many meanings In Article 149, Limitation Act, it seems to be used in contradistinction to Government, because that Article

(1912) 16 Ind Cas 626 (629) (Mad), Alagazinga Ayua Varalangaru v. Talub Board, Rajahmundry

(1866) 5 Suth W R 136 (187), Bromanund Gossam v The Government

(1910) 5 Ind Cas 118 (118, 119) 83 Mad 862, Venhalarama Auger . Sceretarn of State

(1912) 15 Ind Cas 257 (258) (Mad), Narayana Pillar v Secretary of State (1915) A I R 1915 Mad 720 (721) 21 Ind Cas 735, Bovana v Asethu

(1885) 9 Mad 175 (181, 184), Secretary of State v Vera Hayan,

(1915) A I R 1915 Mad 808 (200) 25 Ind Cas 608, Sambasina Mudaliar v Secretary of State (Though the general presumption, where a person

some one is shown to have eneroached on it)

6. (1916) A I R 1916 F C 21 (27) 39 Mad 617 43 Ind App 192 35 Ind Cas 902

7 (1922) A I R 1922 All 57 (58, 59) 66 Ind Cas 582, Secretary of State v

(1910) 8 1ud Cas 1096 (1097, 1098) 33 All 229, Bank of Upper India v. Secretary of State (6 111 143, Followed)

(1911) 38 Ind App 201 (216) 36 Bom 1 12 Ind Cas 117 (P C), Kaikhusru Iderji v Secretary of State

Note 10

1. (1931) A I R 1931 Sind 55 (55) 131 Ind Cas 151, Secretary of State v. Municipality of Karachs

Note 11

1 (1934) A I R 1934 Bom 231 (232) 58 Pom 437 151 In 1 Cas 911 (S B).

Article 149 Notes 9-11

Article 149 Notes 11—12 provides that time runs against the Secretary of State from the same date as it would in a suit against a private person."²

12. Acquisition of easement against Government. — See Notes to Sectioo 26, ante.

SECOND DIVISION: APPEALS

Description of appeal. Period of Immetation. Time from which period begins to ruo.

Article 150

150.* Under the Code of Criminal Procedure, 1898, from a sentence of death passed by a Court of Session.

Synopsis

- 1. Legislative changes.
- Scope and applicability.
- 1. Legislative changes.
- There was oo Article corresponding to this Article to the Act of 1871. Section 271 of the Code of Criminal Procedure, 1872, however provided a period of seven days for such appeal.
- 2. The provision was first introduced in 1877.
- The words "Sessions Judge" which occurred in the Act of 1877 were substituted in the present Act by the words "Court of Session."
- Scope and applicability. This Article applies only to appeals from a sentence of death passed by a Court of Session. As to the limitation for other appeals under the Criminal Procedure Code, see Articles 150 A, 151, 155 and 157 infra.

The right of appeal from a sentence of a Court of Session is given by Section 410 of the Code of Criminal Procedure.

Article 150 A

150 A. Under the Seven days. The date of Criminal Procedure, 1898, from a finding rejecting a claim under section 443 of that Code.

Act of 1877
Sulstantially same as above.
Acts of 1871 and 1859

No corresponding provision.

2 The expression "against a private person" in the alove passage is obviously a mistable for "by a private person."

Article 150 A Notes 1 —2

- Legislative changes.
- 2. Scope and applicability.
- Legislative changes.—This Article has been newly introduced into the Limitation Act by Section 42 of the Criminal Law Amendment Act 12 of 1923, which received the assent of the Governor-General on 16th March 1923.
- 2. Scope and applicability. The claim under Section 443 of the Criminal Procedure Code referred to in this Article, is a claim to be tried under the special procedure of Chapter 33 of the Criminal Procedure Code relating to trial of cases outside the Presidency Towns in which European and Indian British subjects are concerned.

Where the Magistrate rejects the claim of any person to be tried under the procedure prescribed by the said Chapter, and records a finding to that effect, the person by whom such claim is made has, under the said Section 443 of the Criminal Procedure Code, a right of appeal to the Sessions Judge whose decision is final.

This Article prescribes the period of limitation for presentation of such appeals. Where the claim is rejected, the Magistrate is required to stay proceedings until the expiration of the period allowed for the presentation of the appeal under this Article, or if an appeal is presented, until it has been decided.

151.* From a de-Twenty days. The date of the High Courts of Judicature at Fort William, Madras, Bombay and Lahore in the exercise

Article 151

Synopsis

- Legislative changes.
- 2. Scope of the Article.
- 3. Starting point.

151 -From a decree or order of any Twenty days

The date of the decree or order,

its original jurisdiction

tion.

of its original jurisdic-

Acts of 1871 and 1859 No corresponding provision.

Sunopsis

Legislative changes.

2. Scope and applicability.

1. Legislative changes. This Article has been newly introduced into the Lamitation Act by Section 42 of the Crimical Law Amend. ment Act 12 of 1923, which received the assent of the Governor-General on 16th March 1923

2. Scope and applicability. - The claim order Section 443 of the Criminal Procedure Code referred to in this Article, is a claim to be tried under the special procedure of Chapter 33 of the Criminal Procedure Code relating to trial of cases outside the Presidency Towes in which Europeae and Indian British subjects are concerned.

Where the Magistrate rejects the claim of any person to be tried under the procedure prescribed by the said Chapter, and records a finding to that effect, the person by whom such claim is made has, ueder the said Section 443 of the Criminal Procedure Code, a right of appeal to the Sessions Judge whose docision is final.

This Article prescribes the period of limitation for presentation of such appeals. Where the claim is rejected, the Magistrate is required to stay proceedings until the expiration of the period allowed for the presentation of the appeal under this Article, or if an appeal is presented, until it has been decided

151.* From a de-|Twenty days.|The date of cree or order of any of the High Courts of Judicature at Fort William, Madras, Bombay and Lahore in the exercise of its original jurisdiction.

the decree or order.

Sunopsis

- 1. Legislative changes.
- 2. Scope of the Article.
- 3. Starting point.

Act of 1877

151 -From a decree or order of any Twenty days.

The date of the decree or order.

Acts of 1871 and 1859 No corner ending provision. Article 150 A Notes 1-2

Article 151

Article 151 Notes 1--2

Other Topics

Appeal under Indian Divorce Act So Note 2, Pt. 6.
"Decree or order" covers 'udgment' under Letters Patent ... Son Note 3, Pt. 3
Original pursshetton and ordinary original civil jurisdiction: See Note 2, Pts. 4, 5
Time for obtaining copy to be excluded, even if copy not required under rules ...
Son Note 3, Pt. 4

1. Legislative changes.

- There was no provision corresponding to this Article in the Act of 1871 and the Act of 1859. The various High Courts framed their own rules as to the period within which the appeals referred to in this Article should be filed.
- 2. By the Amending Act 8 of 1930, the words "Lahore and Rangeon" have been substituted for the words "or the Chief Court of the Punjab or the Chief Court of Lower Burma," Inasmuch as there are now High Courts in the said two provinces.
- 3. The word "and" was inserted before "Lahore" and the words "and Rangoon" after "Lahore" were emitted by the Government of India (Adaptation of Indian Laws) Order, 1937.
- 2. Scope of the Article. This Article applies only to appeals from the decroes or orders made in the everelse of the original jurisdiction of the High Courts specified. It does not govern appeals from the decrees or orders made in the exercise of their appellate jurisdiction. The expression "original jurisdiction" is used in this Article as opposed to "appellate jurisdiction." The original jurisdiction of the High Courts includes insolveney and matrimonial jurisdictions. The power of the High Courts to issue High Procyative Writs such as Mandamus, Certiovari and Habeas Corpus is part of their original jurisdiction of the High Court, and its ordinary original civil jurisdiction of the High Court, and its ordinary original civil jurisdiction. The Patna and Allajabad High Courts have not

Article 151 - Note 1

1. (1898) 22 Dom 612 (616), A v. B.

(1869) 22 from 642 (646), A v. D. (1869) 12 Suth W R 455 (159) : 13 Suth W R 216 : 5 Deng L R 47, Hurruck Sunth v Tookee Ham Sahon.

(1969) 11 Suth W R 107 (103). In the matter of Hurruck Singh.

Note 2

(1880) 13 Pom 520 (533) 16 Ind App 156; 5 Svr 400: 13 Ind Jur 251 (P.C).
 In the matter of Candas Narrondas Navirahu. (Case under Articlo 180 of the Act of 1877)

[See however (1929) A I B 1929 Ring 229 (192); 7 Ring 201; 119 Ind Cas 615, In the matter of In W. Nauce (Application for review of pulgment passed in its involvency jurishetion is not within Article 162 of the Act).

2. (1993) 22 Bom 613 (616), A v. B.

3 (1930) A I R 1930 Ma I 896 (992, 910) : 53 Ma I 979 : 123 Ind Cas 851, Venkataratnam v Secretary of State

4 (1930) A I R 1970 Mad 779 (7:0): 53 Mal 237: 126 Ind Cas 491, In the matter of Kupp usamy Nagajar.

Article 151 Notes 2-3

been invested with the ordinary original civil jurisdiction.5 An appeal under the Indian Divorce Act of 1869 against a decree absolute made on the Original Side of a High Court in a suit for divorce is governed by this Article. Compare Section 29, Clause (3) of the Limitation Act, which provides that "nothing in the Limitation Act shall apply to suits under the Indian Divorce Act of 1869." This prohibition is restricted only to suits and hence does not extend to appeals 6

This Article also governs an appeal from a decree or order of the Madras City Civil Court to the High Comt · vide Section 15, Clause (2) of the Madras City Civil Courts Act (7 of 1892).

3. Starting point. - Time, under this Article, commences to run from the date of the decree or order appealed from Order 20 Rule 7 of the Civil Procedure Code provides that the decree shall bear date the day on which the sudament was pronounced. By virtue of O. 49 Rule 3 of the same Code, however, Order 20 Rule 7 does not apply to Chartered High Courts in the exercise of their original civil jurisdiction But, as a matter of practice of the various High Courts, the decree is made to bear the date of the judgment. It has accordingly been held that the starting point under the Article is the date of the sudament even though the decree is finally settled long after the date of the sudament.2

The words "decree or order" as used in this Article are wide enough to cover a 'judgment' in the sense in which that word is used in the Letters Patent. Therefore, the period of limitation for an appeal under Clause 13 of the Letters Patent from a sudament of the Rangoon High Court on its Original Side is twenty days from the date of the sudament, such an appeal falling under this Article.3

In computing the period of twenty days allowed by this Article, the time taken in obtaining copies of the indement and decree appealed from should be excluded under Section 12, sub-section 2 ante, even in cases where such copies are not required to be annexed to the memorandum of appeal by the rules of the High Court

Note 3

1. (1913) 21 Ind Cas 545 (545) (Mad], Abcobuchar Rahimfulla Sail v. Official

Assignee of Madras (1937) AIR 1937 Pom 64 (65) . I L R (1937) Pom 421: 167 Ind Cas 664, Nemchand Uttauchand v. Chaturbhu; Damp

[See also (1884) 10 Cal 652 (659, 600, 661), Bamey v. Broughton. (The decision assumed that Section 205 of the old Civil Procedure Code corresponding to the present Order 20 Rule 7 applied to the decree passed on the Original Side of the High Court)]

2. See the cases cited in Foot-Note 1.

3 (1927) A I R 1927 Rang 20 (25): 4 Rang 205: 99 Ind Cas 417, Junbhoy N. Surty v. T. S. Chettiar Firm.

(1926) A I R 1926 Rang 143 (144] : 98 Ind Cas 689, M. H. Ariff v. Perumal.

^{5 (1930)} A I R 1930 Pat 538 (544) : 10 Pat 216 : 129 Ind Cas 529 (F B), Suratmol Briglal v. Commissioner of Income-lax, Bihar and Orissa.

^{6 (1998) 22} Bom 612 (616), A v B

Article 151 Note 3

concerned.4 Similarly, where a portion of the period allowed by this Article is occupied by the appellant in getting the order appealed from varied and settled by the Registrar, it may be excluded under sub-section 3 of Section 12 5 As to the question whether Section 12 can be invoked for the purposes of computing the period of limitation under this Article in cases (a) where application for copy of decree is made after the expiration of twenty days prescribed by this Article or (b) where the time limited by this Article is fully taken up in getting the decree prepared in accordance with the practice of the Original Side of the High Court, see the undermentioned cases.6

Article 152

152.* Under the Thirty days. The date of the Cede of Civil Precedure. 1908, to the Court of a District Judge.

decree or order appealed from.

Sunopsis

- 1. Legislative changes.
- 2. Scope.

••

- 2a. "Under the Code of Civil Procedure."
- 3. "Date of the decree."
- 4. Amendment of decree under Section 152, Civil Procedure Code - Effect of.
- 5. Effect of review of judgment.
- 6. Appeals from orders.
- 7. Time expiring on date on which Court is closed.
- 8. Extension of time.
- 9. Exclusion of time.

Act of 1877 Same as above.

Act of 1871 Columns one and two, same as above. Column three ran :- The date of the decree appealed against.

Act of 1859 No corresponding provision.

4. (1928) A I R 1928 P C 103 (105) · 6 Rang 302 · 109 Ind Cas 1 : 55 Ind App (Reversing on

18 852 (F B),

- 5. (1937) A I R 1937 P C 107 (107) 167 Ind Cas 345 . 31 Sind L R 239. Hubert
- Rowan Hodge v Mohamed Kampar Shah. 6. (1937) A I R 1937 Bom 162 (163, 164) . 168 Ind Cas 77 : I L R (1937) Bom 443 (F B), Murlidhar Shrinivas v Motilal Ramcoomar.

(1929) A I R 1929 Cal 734 (735) · 56 Cal 709 : 121 Ind Cas 307, Sambhu .1 1215 (F B), Secre-

TR 1920 Cal 804) as 277. Kamruddin

d 999 : 68 Ind Cas - Lee.

Legislative changes.—This Article is the same as Article 152 of the Act of 1877 and Article 151 of the Act of 1871. In the Act of 1871, the third column contained only the words "the date of the decree appealed against." There was no reference to orders appealed against.

- 2. Scope, This Article prescribes the period of limitation for an appeal under the Civil Procedure Code, to the Court of the District Judge. Article 156 infra prescribes the period of limitation for an appeal to the High Court except where the appeal is from a decree or order passed in the exercise of the original jurisdiction of the High Court in the hiter case, Article 151 is applicable and prescribes the period of twenty days from the date of the decree or order.
- 2a. "Under the Code of Civil Procedure." See generally Note 3 to Article 156 infra. An appeal to the District Judge under the Agra Tenancy Act, 1901, against a decree of the Revenue Court is governed by the procedure prescribed by the Civil Procedure Code and the period of limitation prescribed by Article 152.
- 3. "Date of the decree." See for a full discussion Note 5 to Article 150 infra As will be seen from that Note, the date of the decree is the date of the pudgment, no matter on what date the decree was actually signed. The reason is that it is on the date of the judgment that the Court must be deemed to have expressed what the decree is, and, when a person has the judgment of the Court in his favour, it may be said that he then obtains his decree, and that decree though drawn up afterwards relates hack to the date of the judgment."

Order 20 Rule 1 of the Cavil Procedure Code provides that, after the case has been heard, the Court shall pronounce pudgment in open Court either at once or on some future day, of which due notice must be given to the parties or their pleaders Where counsel of the parties have been duly given notice of the date fixed for

Article 152 - Note 2a

- 1 (1912) 17 Ind Cas 653 (653) (All), Ram Lal v Amar Chand
- Note 3
- 1 (1930) A I R 1930 Rang 67 (68) 126 Ind Cas 543, U Po Thaw v Ma Thit.
 - (1899) 23 Bom 442 (445), Yamajı v Antajı (1915) A I R 1915 Mud 808 (308) 25 Ind Cas 67, Narayanasamy v Krishna-
 - (1898) 25 Cal 109 (111), Golam Gaffar Mandal v Goljan Bibi
 - (1936) 165 Ind Cas 53 (54) (Cal), Kedar Nath Moyra v Ghollam Hossein Mollah
 - (1916) A I R 1916 Cal 511 (512) S2 Ind Cas 744, Anandram v Nelyananda Barham.
 - (1890) 12 All 461 (468) 1890 All W N 149 (F B), Bechs v .lhsan Ullah Khan. (1992) A 1 R 1992 Nag 113 (113) 66 Ind Cas T. Narayan v Randulars (1997) A 1 R 1997 Rang 335 (335) 101 Ind Cas 319, Perumal Massiry v.
- Pathers Komor
 2. (1924) A I R 1924 Cal 1064 (1065) \$2 Ind Cas 746, Gursbala Dan v. Biswam-bhar Haldar.

Article 152 Notes 1—3 Article 152 Notes 3-5 delivery of the judgment, limitation for appeal will begin to run from that date, although neither the parties nor their counsel were present.³ It is not necessary, in such cases, that the Court should communicate the result of the case to the parties.^{3a} But where a unigment is pronounced in the absence of the parties or their counsel on a date of which no notice had been given to them, and the Judge only sent an intimation to the plaintiff's pleader of the decision of the case against him, the judgment cannot he said to have been pronounced in accordance with law, and limitation for appeal begins to run only from the date on which intimation is received about the decision of the case and not from the date on which judgment was written and signed ⁴ But from the fact that the whole judgment has not been read out in Court, it cannot be said that judgment is not pronounced.⁵

- 4. Amendment of decree under Section 152, Civil Procedure Code Effect of. See Noto 14 to Section 5 ante, Note 8 to Article 156 infra and the undermentioned cases.
- 5. Effect of review of judgment. Where a review of judgment is granted, the result is a new decree superseding the original decree. In this respect it differs from an amendment of a decree under Section 152 of the Civil Procedure Code. Where therefore a review of judgment has been granted, time for appeal from the decree passed on review runs from the date thereof. And this would

S. (1927) A I R 1927 Lah 59 (59): 98 Ind Cas 942, B. B. & C. I. Ry Co. v. Ransarup Mahrumal.

8a (1936) A I R 1936 Lah 742 (743) : 166 Ind Cas 698, Ladha Mal-Bishen Das v. Nadar

5. (1926) 94 Ind Cas 121 (121) (Nag), Kutub-ud-din v. Gulam Rabbans. Note 4

(1917) A I R 1917 Low Bur 162 (163): 35 Ind Cas 847, War Lone v. Rainey.
 (1924) A I R 1924 Cal 893 (899): 78 Ind Cas 525, Satya Ranjan Nag v.
 Kehitsh Chandra Pal.

(1925) A I R 1925 All 567 (568): 85 Ind Cas 637, Ishwar Prasad v. Bishunath Prasad Singh.

(1905) 9 Cal W N 605 (607), Menat Ali v. Amdar Ali.

Note 5
1. (1881) 6 Cal 22 (25) · 6 Cal L R 575 : 5 1nd Jur 522 : 3 Shome L R 197,
Joykushen Mookerjee v. Attoor Robonsan.

(1906) 30 Bom 56 (60) 7 Bom L R 664, Vidilal v. Fulchand.

(1981) A I R 1931 Cal 323 (327) - 131 Ind Cas 258, Adityn Kumar v. Abinash Chandra (1931) A I R 1931 Cal 570 (579) : 133 Ind Cas 571, Soudamin Dasi v.

Nabatak Ma. (1924) A 1 R 1924 Lah 62 (62) : 4 Lah 165 · 75 Ind Cas 520, Nawaz Ale v.

Allu. (1936) 165 Ind Cas 53 (54, 55) (Cal), Kedar Nath Moyra v. Gulam Hossein

(1926) A 1 R 1926 Oudh 55 (56) · 90 Ind Cas 119, Ghuttur Singh v. Phulang Singh. be so even if the original decree is nltimately uphold on review.² See also Note 9 to Article 156 infra.

- Article 152 Notes 5—9
- 6. Appeals from orders. This Article governs also appeals under the Civil Procedure Cole from orders to the District Judge. As in the case of an appeal from a decree, the memorandum of appeal in the case of orders also should be accompanied by a copy of the order appealed from as well as a copy of the judgmont. Where, however, a formal order has not been drawn up, it is sufficient for the appellant to attach to the memo of appeal a copy of the judgment alone and time will run from the date of the judgment. It has also been held that where the formal order is an exact copy of the concluding portion of the judgment, failure to file a copy of such order will not invalidate the appeal 3 See also the undermentioned case.*
- 7. Time expiring on date on which Court is closed. Where the period prescribed by this Article expires on a day on which the Court is closed, the appeal may, under Section 4 of the Act, be filed on the day on which the Court re-opens See Notes to Section 4 ante.
- 8. Extension of time.—An appeal governed by this Article may be admitted after the expiry of the period prescribed, if sufficient cause is shown under Section 5 ante for not preferring it within that period. See Notes to Section 5 ante.
- 9. Exclusion of time. As to the right of the appellant to exclude the time requisite for obtaining copies of the judgment and decree, see Notes 7 and 10 to Section 12 ante.

On the question as to whether and when the interval between the pronouncing of the judgment and the signing of the decree can

> [See also (1923) A I R 1923 Cal 113 (114) 73 Ind Cas 34, Gour Krishna Sarhar v Nilmadhab Saha (1929) A IR 1929 Bom 183 (185) 116 Ind Cas 227, Shidramappa

Reianshulappa v Gurushantappa Shankrappa]
2 (1918) 20 Ind Cas 647 (648) (All), Nanhe v. Mangat Ras.

(1928) A I R 1928 Cal 418 (419) 107 Ind Cas 751, Nubran Ghandra v Abdul Hahim

(1915) A I R 1915 Low Bur 152 (152) 27 Ind Cas 732, Maung Kyaw v Ma Gaul

Note 6

1 (1918) A I R 1918 All 994 (395) 42 Ind Cas 888 40 All 12, Qasim Ali Khan v Mt Bhaquanta Kuar

(1923) A I R 1923 Bom 177 (181) 47 Bom 849 77 Ind Cas 83, Dadabhas Framjs Cou asjs Dorabjs

(1912) 14 Ind Cas 1006 (1006 1007) (Cal), Kamala Dan v Tarapada Muherji
 (1924) A I R 1921 All 102 (162, 163) 74 Ind Cas 486, Kadar Nath v Nonak
 (1933) A I R 1933 All 762 (763) 147 Ind Cas 865 56 All 27, Surendra
 Naram v Lad Dahadur Singh

 (1923) A I R 1923 All 579 (579) 74 Ind Cas 761, Mt Rausilla Euer v Mt Sukhdei

4. (1902) 6 Cal W N 283 (284), Khurode Sundars v Jnanendra Nath (Appeal from order under Section 47, C P C—It is inflicent to attach to the memorindum of appeal a copy of the order itself—Copy of decree need not be attached even if such a decree may have been drawn up)

Article 152

be deducted in computing the period of limitation for appeal, see

Section 14 of the Limitation Act does not apply to appeals. But where through a bona fide mistake, time has been spent in prosecuting an appeal in a wrong Court, the delay may be excused in the exercise of the Court's discretion under Section 5. But if the appellant has been guilty of carelessness, he is not entitled to extension of time on the ground of his having prosecuted his remedy in the wrong Court.

See Note 9 to Section 5 ante.

Majesty in Council.

Article 153

153.* Under the Thirty days. The date of the order. Subordinate Court refusing leave to a one la fe His

1. Scope of the Article. — Under Section 109 of the Code of Civil Procedure an appeal his in certain cases, direct to the Privy Council from Courts other than High Courts. Thus, the Court of First Appeal against orders under Section 101 of the Civil Procedure Code is a Court of "final appellate jurisdiction" within the meaning of Section 109 of that Code and an appeal lies direct to the Privy Council provided the other conditions necessary exist. Where in such cases leave to appeal is refused mider Order 55 Rule 6 of the Code, an appeal from such order of refusal will lie under Order 43 Rule 1, Clause (v). This Article provides the limitation for such appeals.

Act of 1877

163 -- Under the same Code, Thirty days. The date of the order refusing the Section 601, to a High Court.

Acts of 1871 and 1859 No corresponding provision.

Note 9

(1904) 28 Bom 235 (237): 5 Bom L R 947, Daudbhai Musabhai v. Emnabai.
 (1907) 34 Cal 216 (219): 5 Cal L Jour 380, Sarat Chandra Bose v. Saraswats
 Debt.

(1922) A I R 1922 Lab 233 (234) : 2 Lab 1, Umed Ali v. Jhangmaghiana Municipality. (Revision filed though appellant knew appeal lay— Delay not excessed.)

154.* Under the Thirty days. The date of the Code of Criminal Procedure, 1898, to any Court other than a High Court.

sentence or order appealed Article 154

Sunopsis

- 1. Scope and applicability.
- Appeals from orders under Sections 476 and 476 A nf the Criminal Procedure Code - Starting point,
- 3. Appeals from jail.
- 1. Scope and applicability. This Article applies to appeals under the Code of Criminal Procedurn to any Court other than the High Court. The next Article and Article 157 apply to appeals to the High Court, excepting appeals covered by Article 150 Chapter 31 of the Code of Criminal Procedure specifies the various cases in which appeals will be to Courts other than the High Court, and Section 476 B provides that an appeal shall lie from an order making or refusing to make a complaint under Sections 476 and 476 A of the Code.

An application under sub-section 6 of Section 195 of the Code of Criminal Procedure before its amendment in 1923, was held not to be an appeal and not governed by this Article 1 That sub-section has now been abolished, and the said cases are un longer of any importance

An application made under Section 520 of the Code of Criminal Procedure to a Court of appeal, confirmation, reference or revision is not in the nature of an appeal, so as to attract the provisions of the Lamitation Act 2

2. Appeals from orders under Sections 476 and 476 A of the Criminal Procedure Cude-Starting point,-Where an application under Section 476 of the Code of Criminal Procedure asking the Court to make a complaint is refused, time runs from the date of the

Act of 1877, Article 154 and Act of 1871, Article 152 Substantially same as above

Act of 1859

No corresponding provision.

Article 154 - Nute 1

- 1 (1916) A I R 1916 Mad 1111 (1111) 14 Ind Cas 305 13 Ct. L Jour 209 39 Mad 750 (F B), Bapu v Eapu (1912) 16 Ind Cus 167 (169) 18 Cr. L Jour 599 41 Cal 239, Pochy Metay v
 - Emperor (1920) A I R 1920 Lah S05 (305) 1 Lah 602 60 Ind Cas 33 22 Cr. L Jour 177, Punna Lal v Jamila Mal
- 2 (1927) A I R 1927 Mad 797 (798) 50 Mad 916 104 Ind Cas 719 28 Cm L Jour 879, Seinirasa Moorthi v. Narammhalu Naidu

Article 154 Notes 2-8 order of refusal. Where, however, an order is made directing a complaint to be filed, time is to be calculated not from the date of such order but from the date often the complaint has been actually made. The reason is that Section 476B of the Code of Criminal Procedure gives a right of appeal to a person against whom a complaint "has been made."

3. Appeals from jail.—For the purposes of computing the period of initiation in the case of appeals preferred by appellants in jail, time is to be calculated up to the date of presentation of the appeal to the officer in charge of the jail. The reason is that under the provisions of Section 420 of the Criminal Procedure Code, presentation of the petition of the appeal to the officer in charge of the jail is equivalent to the presentation to the Court so far as the requirements of the Limitation Act are concerned.

Article 155

155.* Under the Sixty days. same Code to a High Court, except in the cases provided for by article 150 and article 157.

The date of the sentence or order appealed from.

Synopsis

- 1. Scope.
- Appeal from order of Civil Court under Section 476 of the Criminal Procedure Code.
- 3. Appeal from order of Single Judge of High Court.
- 4. Application for leave to appeal under Section 449 of the Criminal Procedure Code.

5. Starting point.

Acl of 1877

Substantially same as above. Act of 1871, Article 153

Column one—Under the same Code to the High Court Columns two and three substantially same as above

Act of 1859 No corresponding provision

Note 2

- (1925) A I R 1925 Cal 1228 (1289): 52 Cal 1009.
 90 Ind Cas 559: 26 Cri L
 Jour 1569, Chunder Kumar Sen v. Mathurya Debya.
 (1931) 1931 Mad W N 1064 (1067). Kandacsamy Pillar v. Thrumatska assay
 - Pilla: (A I R 1928 Bom 64 and A I R 1925 Cal 1228, Referred to.)
- (1928) A I R 1928 Born 64 (64). 108 Ind Cas 26: 52 Born 164: 29 Cri L Jour 315, Daga Devy: Patri v. Emperor.
 - (1927) 106 Ind Cas 584 (584) (Lah), Labha Mai v. Wasawa Mai. (1927) A I R 1927 Lah 54 (54, 55): 7 Lah 77 . 98 Ind Cas 593 : 27 Cri L Jour
- (1927) A I R 1927 Lan 54 (54, 50): 7 Lan 71 . 30 Ind Cas 533 : 27 Ct 1925 1921, Fitzholmes v. Emperor.
 (1985) A I R 1935 Nag 199 (200) · 1935 Cci Cas 1096 : 31 Nag L R 370 : 158
 - Ind Cas 496: 36 Cri L Jour 1371, Bal Gound v. Jamnabas.

Note 3

(1886) 9 Mad 258 (259) · 1 Weir 789, Quegn-Empress v. Lingayya.

 Scope. — This Article applies to appeals, under the Criminal Procedure Code, to the High Court except in the eases provided for by Articles 150 and 167. In other words, it applies to all appeals to the High Court under the Code of Criminal Procedure, excepting appeals from sentences of death, and appeals from acquittals?

An appeal preferred to the High Court under the Extradition Act is not one under the Criminal Procedure Code and is not governed by this Article 2

- 2. Appeal from order of Civil Court under Section 476 of the Criminal Procedure Code. — An appeal against the order of a Civil Court (e. g the District Judge), making or redusing to make a complaint under Section 476 of the Criminal Procedure Code is not a civil appeal governed by the Civil Procedure Code, but an appeal under the Criminal Procedure Code and is governed by this Article and not by Article 156.
- 3. Appeal from order of Single Judge of High Court.—The Article is not immted to appeals to the High Court from Courts in the mediusal, but extends also to appeals from orders of a Single Judge of the High Court to a Division Bench of the High Court. Thus an appeal from an order of a Single Judge of a High Court under Section 449, sub-section 1, clause (c) of the Criminal Procedure Code is an appeal under the Criminal Procedure Code, and consequently this Article will apply.

Suppose an order is passed under Section 476 of the Criminal Procedure Code by a Single Judge of the High Court The question whether an appeal will he to a Bench of the same High Court under Section 476 B of the said Code depends upon the question whether such Single Judge can be considered as the subordinate of the Division Bench The reason is that an appeal hes under that Section only to the Court to which the Court passing the order sought to be appealed from is unbordinate. It has been held by the High Court of Allahabad's and the Chef Court of Lower Barms' that

Article 155 - Note 1

 (1925) A I R 1925 Rang 80 (39)
 Rang 886 26 On L Jour 293 84 Ind Cas 437, In re Abdulla (Appeal under S 493 (b), Criminal P C, from a sentence exceeding 4 years by a specially empowered Magistrate)

2 (1892) 15 Mad 414 (415) 2 Mad L Jour 142 1 Weir 588, Hayes v Christian.

Note 2

 (1927) A I R 1927 G:1718 (719) 104 Ind Cas 456 28 Cr. L Jour 840, Rajann Kanta Kayal v Estopmons Dan (1926) A I R 1926 All 211 (212) 93 Ind Cas 851, Sheo Prasad v Sheo Bans

(1926) A I R 1926 Sund 215 (216) 20 Sund L R 90 27 Gri L Jour 780 95 Ind Cas 316. Gerumal v Shengram.

Note 3

(1926) A I R 1926 Cal 1203 (1201)
 53 Cul 746
 98 Ind Cas 248
 27 Cr. L
 Jour 1304, Thomas v Emperor
 (1917) A I R 1917 All 474 (475)
 36 Ind Cas 595
 39 All 147
 17 Cr. L Jour

2 (1917) A I R 1917 All 474 (475) 36 Ind Cas 585 39 All 147 17 Cr. L Jour 537, Ramjas v Mahadeo Pershad

3 (1911) 12 Cri L Jour 409 (470) 11 Ind Cis 1005 6 Low Par Rul 25, Than Pe v Ba Than Article 155 Notes 1-3 Article 155 Notes 3-5

a Single Judge of the High Court is not subordinate to the High Court, and therefore an order by such Single Judge under Section 476 is not appealable at all under Section 476B to the High Court. The High Courts of Bombay. Calentta and Madras have, on the other hand, held that he is so snbordinate and that an appeal will lie to the High Court under Section 476 B. In the latter view, the appeal so preferred will be one under the Criminal Procedure Code, and will be governed by this Articlo. In the undermentioned cases the question was raised whether Article 151 or this Article will apply to such cases, but it was not decided. It is submitted that Article 151 which is a general provision will not provail against this Article which is a specific provision.

- 4. Application for leave to appeal under Section 449 of the Griminal Procedure Code .- An application for leave to appeal under Section 449 of the Criminal Procedure Code has been held to he governed by the sixty days' rule under this Article. The reason is that such application must necessarily precede the admission of the appeal itself. In other words, where the appeal is barred under this Article, the application must also necessarily be barred. I Similarly an application under Section 449 for determination of the status of the accused as en European British subject presented after eivty days from the date of the conviction would be barred by limitation, as the appeal itself would be barred.2
- 5. Starting point. Where a complaint is directed to be made under Section 476 of the Criminal Procedure Code, time runs from the date of making the complaint and not from the order directing the complaint to be made 1 (See also Notes to Article 154.)

	_			
 	*** ****		· · ·	- ar 497 . 47
		•		· Cri L Jour
		••		8:71 Ind
	•			1: 17 Mad

. 25 Cm J. The appeal

8. (1

Note 4

1. (1926) A I R 1926 Cal 1203 (1204) : 53 Cal 746 : 98 Ind Cas 248 . 27 Ct. L Jour 1804, Thomas v. Emperor (1927) A I R 1927 Cal 307 (308) - 54 Cal 52 : 101 Yad Cas 657 - 28 Cri L Jour

491, Gallagher v. Emperor 2 (1926) A I R 1926 Cal 1203 (1204) : 53 Cal 746 : 93 Ind Cas 248 : 27 Cri L Jour 1304, Thomas v. Emperor.

Nnte 5 1 (1927) A I R 1927 Lah 54 (54) : 98 Ind Cas 393 . 7 Lah 77 : 27 Cr. L Jour 1321, Fitzholmes v Emperor

156. Under the Ninety days. Code of Givil Procedure, 1908, to a High Court, except in the cases provided for by article 151 and article 153.

The date of Article 156

Synopsis

- 1. Legislative changes.
- 2. Scope of the Article.
- 3. "Under the Code of Civil Procedure."
- 4. "High Court."
- 5. "Date of the decree."
- 6. Decree or order.
- 7. Several decrees in same suit.
- 8. Amendment of decree Effect of.
- 9. Review of judgment Effect of.
- 10. Death of party after decree.
- Ex parte decree set aside by trial Court but restored by High Court.
- 12. Section 4 and this Article.

Other Topics

1. Legislative changes.

zt.

- Article 154 of the Act of 1871, corresponding to this Article, did not contain in the first column the words "except in the cases provided by Article 151 or Article 155" as there were no such Articles in that Act Not did it contain in the third column, the words "or order."
- Article 156 of the Act of 1877 was worded in terms similar to this Article
- Scope of the Article.—Article 151 ante provides for appeals from decrees or orders of certain High Courts in the exercise of their

Act of 1877 Same as above

Act of 1871

163 To a High Court for the admis- Ninety days The date of the decree sion of a special appeal

Act of 1859

No corresponding provision

Article 156 Notes 2—3 original jurisdiction. Article 153 provides for an appeal to a High Court from an order of a subordinate Court refusing leave to appeal to His Majesty in Council. This Article applies to all appeals under the Code of Civil Procedure to a High Court other than those provided by Articles 151 and 153.

An "appeal" means an appeal which is preferred as a matter of right and not an appeal which is entertainable or not at the discretion of the Appellate Court. Thus, where it was provided by Section 27 of the Burma Courts Act (17 of 1875) that the Judicial Commissioner may receive an appeal under cortain circumstances, it was held by the High Court of Calentta that such an appeal was not governed by the period of limitation prescribed by this Act for appeals to the High Court. It has been held by the Chief Court of Oudh that an appeal from the judgment of a Single Judge of the High Court made in the exercise of its appellate jurisdiction under the Letters Patent (which provides that no such appeal will lie unless the Judge declares that the case is a fit one for appeal) is not governed by this Article.

3. "Under the Code of Civil Procedure." — The expression appeal under the Code of Civil Procedure" means an appeal governed by the Code of Civil Procedure so far as procedure is concerned. It is not restricted to appeals the right to profer which is conferred by the Civil Procedure Code. Where, under Section 49 of the Burma Courts Act (17 of 1875) there was a right of appeal from the Court of the Recorder of Rangoon to the High Court, and, under Section 97 of that Act the procedure to be followed was that of the Code of Civil Procedure, it was held by the High Court of Calcutta in Aga Mahomed v. Cohen that the appeal was ons "under the Code of Civil Procedure" within the meaning of this Article. Their Lordships observed:

"The Limitation Act, Schedule 2, Article 156, when it speaks of the Civil Procedure Code, is, on the face of it, speaking of a Code which relates to procedure, and does not ordinarily deal with substantive rights; and the natural meaning of an appeal under the Civil Procedure Code appears to us to be an appeal governed by the Code of Civil Procedure so far as procedure is concerned."

The case was followed by the High Court of Madras in Ramaswamy Pillai v. Tahsildar of Madura, where the question was in respect of the period of limitation applicable to an appeal to the

Article 156 - Nots 2

^{1 (1884) 10} Cal 946 (946, 949, 950), Mahomed Hossan v. Inodeen. (On a reference from (1872-1892) Low Bur Rul 275 (277))

 ⁽¹⁹²⁸⁾ A I R 1928 Oudh 108 (109) . 3 Luck 145 . 106 Ind Cas 496, Mt Braj Rani v. Sibta Din

^{1 (1886) 13} Cal 221 (224) Note 3

^{2 (1920)} A I R 1920 Mad 407 (408) . 43 Mad 51 : 53 Ind Cas 405. (13 Cal 221, Followed)

High Court under Section 54 of the Land Acquisition Act (1 of 1894). After referring to Aga Muhammad's Case, and the passage quoted above, their Lordships observed as follows:

"There seems to be no good reason for saying that an appeal under the Civil Procedure Code means only an appeal, the right to prefer which is conferred by the Code itself. On the other hand, it would not be straining the language of the Article too much to hold that an anneal, the procedure with respect to which from its inception to its disposal is governed by the Civil Procedure Code, may rightly be snoken of as an appeal under the Code. This interpretation seems to us to be strengthened by the reference in Article 156 itself to Article 151 of the same Schedule. Article 151 provides for appeals from a decree or order of the High Court in the overcese of its original jurisdiction. Now, though the right to appeal from such decrees or orders is not given by the Code of Civil Procedure, but by the Letters Patent, vet Article 156 speaks of such appeals as appeals under the Civil Procedure Code That also tends to show that what is meant by the Legislature is appeals, the hearing and disnosal of which is governed by the rules of procedure laid

In Dropadi v. Hira Lal,3 Sir Henry Richards, C. J., observed as follows:

"There are several Acts, for example, the Succession Act, the Probate and Administration Act, and the Land Acquisition Act, which make the Code of Civil Procedure applicable to proceedings under the Act and give a right of appeal to the High Court, but do not prescribe any period of limitation for the appeal It has always been assumed, probably rightly, that such appeals are appeals under the Code of Civil Procedure, governed by what is now Atticle 166 of Schedulo 1 to the Lamitation Act and by the general provisions of the Act also."

See also the undermentioned case 4

down in the Civil Procedure Code."

4. "High Court." — There is no definition of the expression "High Court" in this Act, and, consequently, the definition thereof given in the General Clauses Act (10 of 1897) will apply Section 3, sub-section 24 of that Act defines "High Court" as follows

"'High Court', used with reference to exil proceedings, shall mean the highest Civil Court of Appeal, (not including the Federal Court) in the part of British India in which the Act or Regulation containing the expression operates." Article 156 Notes, 3-4

^{3 (1912) 16} Ind Cas 149 (153) 34 All 496 (F B)

^{4 (1928)} A.I.R. 1929. Lah. 483 (489). 110 Ind Cus 374, Pana Bibs v Vahia (Article 156 of Schedule 1 of the Lamitaton etarphs, to oppais under special Acts, the procedure in respect of which is gonzaed by the Code of Civil Procedure. Therefore humitation for an appal under Section 47, Guntulius and Wards Act, is 90 days from the date of the order under appeal.)

Article 156 Note 5

5. "Date of the decree." -Order 20 Rule 7 of the Code of Civil Procedure provides that "the decree shall hear date the day on which the judgment was pronounced" and that "when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree." The date of the decree is, therefore, the date of the judgment even though the decree was actually signed later. This view has been generally accepted as applying to the interpretation of the words "date of the decree" in this Article also.1 A contrary view, namely, that time runs from the date on which the decree is signed, has been taken in some cases. In Ram Asray Singh v. Sheonandan Singh, Chamier, C. J., held that time ran under this Article from the date on which the decree was signed and not from the date on which the judgment was delivered. He relied for this view on the decision of the Calcutta High Court in Beni Madhub Mitter v. Matungini Dasi. That decision, however, did not decide that time ran from the date on which the decree was signed. On the contrary, it decided that time did run from the date of the judgment, but that in computing the period of limitation the period between the date of the judgment and the date of signing the decree should be excluded under Section 12 of the Limitation Act as being time requisite for obtaining copies. In two cases decided by him, Kinkhede, A. J. C., also took the view that the starting point under this Article was the date on which the decree was signed.4 His view has not, however, been accepted in later decisions of the Nagpur Court. A Single Judge of the Lahore High Court has purported to follow the view expressed in Benz Madhab's case? as well as those expressed by the Patna High Court in Ram Asray's cases

Note 5

- I. (1923) A I R 1923 Pat 129 (130): 75 Ind Cas 879. 1 Pat 771, Sagarmal Margari v. Lachmisaran Misir.
 - Marwart v. Lacamistran 201317. (1927) A I R 1927 Nag 1 (2): 98 Ind Cas 1057 (F B), Umda v Rupchand
 - (1926) A I R 1926 Nag 349 (349) . 22 Nag L R 60: 97 Ind Cas 307, Dindayal
 - v. Anops. (1928) 112 Ind Cas 715 (716) (All), Firm Baldeo Pravad Babu Ram v. Firm Haji Ali Mohammad Usman.
 - (1926) 94 Ind Cas 121 (121) (Nag), Kutub-ud-din v. Gulam Rabbani
 - (1929) A I R 1929 Rang 116 (116): 7 Rang 18: 117 Ind Cas 251, Maung Po Kyaw v. Ma Lay
 - (1886) 13 Cal 104 (106) (F B), Beni Madhub Mitter v. Matungini Dasi
- 2 (1916) A I R 1916 Pat 267 (267) : 35 Ind Cas 868 (F B).
- 3. (1886) 13 Cal 104 (106) (F B).
- 4 (1926) A I R 1926 Nag 207 (207): 89 Ind Cas 938, Tularam v. Luximi
 - narayan (1924) A I R 1924 Nag 271 (273) : 20 Nag L R 131 . 78 Ind Cas 996, Pandu
- v. Rajeshvar.

 5. (1927) A I R 1927 Nag 1 (2): 98 Ind Cas 1057 (F B), Umda v. Rupchand
- (1921) A I R 1921 Nag I (2): 98 Ind Cas 1951 (F 5), O sad V. Lapendra (1926) A I R 1926 Nag 349 (349]: 22 Nag L R 60: 97 Ind Cas 807, Dindayal V. Anops.
- (1926) 94 Ind Cas I2I (12I] (Nagl, Kutub ud-din v Gulam Rabbani. 6. (1936) AIR 1936 Lah 976 (978): 168 I C. 897, Khan Chand v. Gurdit Singh.
- 7. (1886) 13 Cal 104 (106) (F B).
- 8. (1916) A I R 1916 Pat 267 (267) : 85 Ind Cas 868 (F B).

Article 156 Notes 5-6

and by Kinkhede, A. J. C., in the two Nagpur cases referred to above. It is submitted that the view that time runs from the date the decree is signed is not correct. The Article clearly specifies the starting point as the date of the decree, and the date of the decree is under Order 20 Rule 7 clearly the date of the judgment. The Legislature must be presumed to have known of this interprotation when it repeated the Article in the present Act. It does not seem permissible to make time iun from a date other than that specified in the Article on any ground of supposed hardship It is also submitted that there does not really seem to be any hardship in accepting the view that the date of the decree is the date of the judgment A party must know on the date of the judgment itself whether he is going to appeal or not against it. And if he intends to do so be can immediately apply for conies of judgment and the decree and, automatically the time taken by the Court in preparing the decree would be excluded under Section 12 of the Act. There is no reason why he should be allowed to wait until the decree is prepared before applying for copies

Order 20 Rule 1 of the Civil Procedure Code provides that when the judgment is not pronounced immediately after the case is heard, notice must be given to the pathes or their pleaders of the day on which the judgment is to be pronounced. Where a judgment is delivered without such notice, it must be taken that the judgment was never pronounced according to law, and time for an appeal will run from the date on which the party or his pleader receives intimation of the decision of the case against him.⁹

Where the Judge gave a judgment but considering that the plaintiff was hable under the Stamp Act to pay a penalty on the sale deed in suit, he ordered that the decree should not be drawn up until that penalty had been paid, and the decree was prepared and signed on the date on which the penalty was eventually paid, it was held in the undermentioned case? that the judgment did not become an operative judgment until the date when the preparation of the decree was ordered and that this was the date of the judgment as well as of the decree from which limitation would run

6. "Decree or order."—It has been held in the undermentioned case! of the Patra High Court that the word "decree" in this Article is not confined to a decree as defined under Section 2 of the Civil Procedure Code, and that an order having the force of a decree under special or local Acts, such as an order under Section 105 of the Bengal Tenancy Act, is a decree for the purposes of this Article also.

(1927) A I R 1927 Lah 839 (839)
 100 Ind Cas 909, Sewa Ram v. Massu.
 (1919) A I R 1919 Lah 102 (103)
 1919 Pun Re No. 27
 51 Ind Cas 239,
 Lally v. Sam Ditta.

10 (1916) \ 1 R 1916 Sind 2 (3] 9 Sind L R 193 34 Ind Cas S67, Khudadad v. Moriokhan

Note 6

1 (1920) A I R 1920 Pat 622 (623, 624) 57 Ind Cas 236 (F I.), Gelab v Janks Kuer

Article 156 Notes 6-8

It is submitted that this view does not seem to be correct. The Civil Procedure Code is an enactment in pari materia with the Limitation Act, and contains a definition of "decree" as well as of "order". There is no reason why the words should be considered to have a different meaning here. No difficulty is created by limiting the word "decree" to the definition given to it by the Civil Procedure Code, inasmuch as if there is a right of appeal from an order to the High Court, the period of limitation is that prescribed by this Article, whether or not the order amounts to a "decree" as defined in the Civil Procedure Code.

In certain proceedings it often happens that although there is a judgment, an order, 1 e., the formal expression of the decision, is not drawn up. In such cases the concluding portion of the judgment which embodies the order is to be treated as the order against which the appeal is to be preferred, and time will run from the date of the judgment.

- 7. Several decrees in same suit. Where there are several judgments and several decrees in the same suit, time for appeal against a particular decree will run from the date of that decree. Thus, time for an appeal against a preliminary decree will run from the date of that decree and not from the date of the final decree.1 Where there are several decrees against different defendants on different dates, the starting point for appeal for any particular defendant will be the date of the particular decree against him.2 Similarly, where an interlocutory judgment was passed against one of two defendants and thereafter a final judgment and decree was passed against both the defendants, it was held by the High Court of Rangoon that the decree must be read as if there were two decrees, one relating to the interlocutory judgment and one relating to the final judgment, and that time for an appeal against the interlocutory judgment ran from the date thereof, even though the decree was signed only on the date of the final judgment.3
- 8. Amendment of decree Effect of, See also Note 14 to Section 5 ante.

An amended decree must be taken as in force from the date of the original decree. There is a distinction between a case of amendment and one of novation or substitution. Where an instrument is amended so as to express the real intention which, it was

² See also (1920) A I R 1920 Mad 407 (408): 43 Mad 51: 53 Ind Cas 405, Ramaswamy Pillas v Tahsildar of Madura.

^{3 (1912) 14} Ind Cas 1006 (1007) (Cal), Kamala Dass v. Tarapada Mulerjs.

Note 7
1 (1933) A I R 1933 Cal 796 (796) . 146 Ind Cas 959, Benodini Choudhurani v.

Jagabandhu Roy
2 (1916) A I R 1916 Mad 1010 (1010) . 31 Ind Cas 917, Sambasna Iyer v.

Muhamad Hussain Rosether

3 (1936) A I R 1936 Rang 313 (314) . 164 Ind Cas 718, Hoch Sein v. Kyaiklat
Municipality

Article 156 Notes 8-9

intended to express, but which it did not completely express, the transaction is not, in substance, varied, but only its inaccurate description rectified. On this principle it has been held that an amendment of a decree under Sections 151 or 153 of the Civil Procedure Code does not give a fresh starting point of limitation for an appeal? or application, except an application for execution of a decree in respect of which it is specifically provided by Article 182 infra that time shall run from the date of amendment. Where, a however, a party is prejudiced by an amendment but finds that, at the date of the amendment, an appeal from the decree is barred if the period is calculated from the original decree, the Court will excuss the delay under Section 5 of the Act.?

There are however some decisions which have taken a somewhat different view In Mt. Gopt Bib's. Chann Prasad,* it was observed by the Patha High Court, purporting to follow the decision of the Calcutta High Court in Amar Chandra v Asad Alt,* that where a decree is amended in material particulars, time would run from the date of the amendment It was also observed that, in any case, the delay caused by the amendment would be excused under Section 5 of the Act In Soudamin Dais v. Nablak Mra,* it was held that where a decree is amended, whether by way of review or under Section 152 of the Civil Procedure Code, time for appeal therefrom would run from the date of the amendment. It is submitted that this contrary view cannot be accepted as correct on principle.

9. Review of judgment — Effect of. — If a decree 1s modified on review or even if the same decree 1s passed after review is granted, the old decree is superseded and the decree for the purposes of appeal is the decree of the control of the decree is nucle cases will be the date of the rower decree! But where an application for

Note 8

- 1 (1891) 14 Mad 150 (152), Pydel v. Chathappan
- (1892) 15 Mad 403 (401) . 1 Mad L Jour 535, Chathappan v Pydel
- (1906) 3 Cal L Jour 188 (191, 192), Brojolal Roy v Tara Prasanna Bhattacharji
 (1917) A I R 1917 Low But 162 (163)
 S5 Ind Cas 347, Wor Lone v G.
- Rainey. (1920) A I R 1920 Pat 622 (625) 57 Ind Cas 236 (FB), Golab v Janhi Kuer
- 3 (1906) 3 Cal L Jour 188 (191, 192), Brojolal Roy v Tara Prasanna Bhattacharji
- (1930) A I R 1930 Pat 142 (143) 117 Ind Cas 187, Mt Gops Bibs v Chana Prasad
- 4 (1930) A I R 1930 Pat 142 (143) 117 Ind Cas 167
- 5 (1905) 32 Cal 908 (909), Amar Chandra Kundu v Asad Als Khan
- 6. (1931) A I R 1931 Cal 578 (579) 133 Ind Cas 571 (A I R 1931 Cal 323, Followed)

Note 9

- (1928) A. I. R. 1928 Cal. 416 (419) 107 Ind. Cut. 751, Nabaran Chandra Sakdar v. Abdul Hakim
- (1926) A I R 1926 Oudh 55 (56) 90 Ind Cvs 119, Ghuttur Singh v. Phulang Singh.
- (1931) A I R 1931 Cal 923 (325, 326) . 131 Ind Cas 258, Aditya Kumar v. Abinash Chandia

place of the old and that therefore time would run from that date. It does not seem correct that the third column must be read differently from what it plainly purports to say.

Article 156 Notes 11 - 12

12. Section 4 and this Article. - This Article should be read with Section 4 ante, and the period allowed for filing an appeal is the time allowed by Article 156 plus the time during which the Court was closed.1

the order appealed from.

157.* Under the Six months. The date of Code of Criminal Procedure, 1898, from an order of acquittal.

Synopsis

- Legislative changes.
- 2. Scope and applicability.

1. Legislative changes.

- 1 There was no Article corresponding to this in the Act of 1871. Under Section 272 of the Code of Criminal Procedure (Act 10 of 1872), it was provided that the rules of limitation were not applicable to appeals against acquittal. By the Amending Act 11 of 1874, a period of six months was provided for such appeals. This provision was transferred to the Lamitation Act in 1877, and inserted as Article 157 of that Act.
- 2 The word "judgment" which occurred in Article 157 of the Act of 1877 has in the present Act been substituted by the word "order "
- 2. Scope and applicability. This Article refers to appeals under the Criminal Piocedure Code from an order of acquittal The only Sections of that Code that provide for appeals from orders of acquittal are Sections 417 and 449 sub-section 2, and under these two Sections it is only the Government that can appeal and not any private person.

Although an appeal under Section 417 would be in time if brought within six months of the date of the order of acquittal, still, justice,

> Act of 1877 Substantially same as above. Acts of 1871 and 1859 No corre-ponding provision

Note 12

1, (1931) A I R 1931 Pat 60 (60) 180 Ind Cas 265, Ram Chandra Shukul v. Six Thakurys Mandil Darkadhis

Article 157 - Nnte 1

1, (1877) 2 Cal 436 (438) (F B), The Empress . Javadulla (1874) 11 Bom H C R 117 (118, 119), Regina v Dorabje Balabhau. Article 157

Article 157 Note 2

Article 158

public interest, necessity and policy, all require that such appeals should be preferred with all reasonable expedition possible, for there may be cases where a new trial may have to be ordered or further evidence to be taken and the larger the interval that has elapsed since the investigation and trial, the greater is the inconvenience and difficulty, not only to get witnesses together but to obtain from them accurate or reliable testimony. The effect of this Article is to fix the period of limitation in respect of all classes of cases of acquittal, whatever may baye been the form of trial and whatever may be the scope of the appeal, i e., whether the trial was or was not one by a jury and whether the scope of the appeal extends to questions of fact as well as to questions of law.2

THIRD DIVISION: APPLICATIONS

Description of Application	imitation.	period begins to run.
158.* Under the Code of Civil Procedure, 1908, to set aside an award.		When the award is filed in Court and notice of the filing has been given to the parties.

aside an award.

- Synopsis 1. Legislative changes.
- 2. Scope and applicability. 3. Period of limitation.
- 4. Starting point.
- 5. Extension of time.
- 6. Exclusion of time.
- 7. Effect of bar.

Act of 1877 When the award is submitted 158 -Under the Code of Civil 1 Ten days. to the Court. Procedure, to set aside an award.

Act of 1871

155 .- Under the Code of f Ten days 1 Civil Procedure to set aside an award

When the award is submitted to the Court, and notice of the submission has been given to the persons and in manner prescribed by the High Court.

Act of 1859

No corresponding provision.

Note 2

1. (1883) 5 All 253 (255) . 1983 All W N 25, Empress of India v. Yakub Khan. (1932) A I R 1932 Rang 146 (147) · 10 Rang 312 : 138 Ind Cas 523 : 33 Cri L Jour 701 : 1932 Cri Cas 709, Emperor v. U San Win.

2. (1934) A I R 1934 Cal 610 (611) · 61 Cal 991: 151 Ind Cas 662: 35 Cri L Jour 1367 : 1934 Cr. Cas 908, Superintendent and Remembrancer of Legal Affairs, Bengal v. Bagirath Mahlo.

Article 158

Notes

1-2

1. Legislative changes. — Article 155 of Act 9 of 1871 corresponding to this Article provided that time ran from the date "when the award is submitted to the Court, and notice of the submission has been given to the persons and in manner prescribed by the High Court." Under Article 158 of Act 15 of 1877 the starting point was the date "when the award is submitted to the Court." These words were altered to their present form by Section 2 and Schedule 1 of the Repealing and Amending Act 18 of 1919.

2. Scope and applicability. — An award made on a reference through Court can be set aside on an application made for the purpose, on any of the grounds specified in Paragraph 15, Schedule 2 of the Code of Civil Procedure. An award made on a reference without the intercention of the Court cannot be set aside on any application, though it may be filed on an application under Paragraph 20 of that Schedule.

This Article applies only to an application to set aside an award, that is, to an application under Paragraph 15 aforesaid. Thus, it will not apply to the following cases —

- 1 An application to modify or correct an award under Paragraph 12 of that Schedule.²
- An application for remission of an award under Paragraph 14 of that Schedule.³
- An application to file an award under Paragraph 20 of that Schedule.⁴
- A written statement filed by defendant in answer to an application for filing an award under Paragraph 20 aforesaid.⁵

In the first three cases the application is not to set aside the award, and in the last case there is no application but only a defence to which the Lamitation Act itself does not apply.

As to whether a party is bound to apply to set aside an award which is null and coid and whether the Court can take notice of such invalidity, see the Authors' Commentaries on the Civil Procedure Code, Schedule 2, Paragraphs 15 and 16 and the Notes thereto.

An application to revise a decree passed on the basis of an award is virtually an application to set askle the award, and is therefore

Article 158 -- Note 2

 ⁽¹⁸⁸⁶⁾ S All 64 (67) 1886 All W N 2, Muhammad Abid v. Muhammad Ashqar

^{2 (1919)} A I R 1919 Mad 877 (877) 47 Ind Cas 597, Appayya v. Fenhataswami. (1933) A I R 1933 All 648 (649) . 146 Ind Cas 596, Keroli v Behari Lal. (1918) 19 Ind Cas 496 (496) (Mad), Hyder Sahib v Giria Chettiar.

^{3,} See cases cited in Foot-Note 2

 ⁽¹⁹³⁶⁾ A I R 1936 Pesh 135 (196)
 2 J R 16, Lechhu Singh v Ganesh Das,
 (1912) 13 Ind Cas 520 (523)
 14 Oudh Cas 308, Badruddin Hasan v. Amir Beaun

⁽¹⁹³⁵⁾ A Í R 1935 Lah 951 (951) 162 Ind Ca= 124, Manghoo Fam v. Firm Girdhari Lal Ramchand

Article 158 Notes 2-4 governed by this Article.

An award made on a reference made in a suit on the Original Side of the Bombay High Court was submitted on the 6th July 1920 and on the 16th July 1920 the defendants filed an affidavit in the Prothenotary's Office objecting to the award. On the 22nd of July they gave notice that they would move the Court on the 29th of July that the award be set aside. It was held by the High Court of Bombay that the filing of the affidavit in the Prothenotary's Office on the 16th of July must be considered to he an "an application" to set aside the award within the meaning of Article 168.

- 3. Period of limitation. The period of limitation is 10 days from the date specified in the third column. The object of the Legislature in allowing so short a period for the preferring of objections to awards has been stated by Mr. Justice Rampini in the undermentioned case1 to be as follows. "Latigants may be very willing to have their cases referred to the decision of arhitrators, whom they regard as amicably disposed towards them, but the moment the arbitrators decide against them they do their utmost to resile from their agreement and to set aside the award. The Legislature has framed Article 158 of the Limitation Act with the object of discouraging and preventing such discreditable attempts. If the provisions of Article 158 are loosely interpreted, and if an award is to be held not to be an award simply because any sort of unsubstantiated objection is made against it, then the object of the Legislature will be defeated and the provisions of Article 158 will be practically erased from the Statute Book."
- 5. Starting point. Till the third column of the Article was amended in 1919, the starting point was the date "when the award is submitted in the Court." There was a conflict of decisions on the question whether, in view of Paragraph 10 of Schedule 2 of the Civil Procedure Code which requires the Court to give the parties notice of filing of the award, time under the Article must, notwithstanding the third column, run only from the date of the notice. The words of

 ^{(1902) 29} Cal 167 (185); 29 Ind App 51:4 Bom L R 161 · 12 Mad L Jour 77:
 6 Cal W N 226 : 8 Sar 154 . 1902 Pun Re No. 25 (P C), Ghulam Khan
 v. Muhammad Hassan.

^{(1903) 12} Mad L Jour 95 (96) (Jour), Critical Note on (1902) 29 Cal 167, Ghulam Khan v. Muhammad Hassan

 ⁽¹⁹²¹⁾ A I R 1921 Bom 419 (420); 45 Bom 1071; 63 Ind Cas 929, Gopalji Kallianfi v. Chhagan Lal Vithalji.

Note 3

^{1 (1902) 29} Cal 36 (41), Ram Narain Roy v. Baij Nath Malla.

Note 4
1. (1914) A I R 1914 Sind 141 (143): 8 Sind L R 190: 27 Ind Cas 871, Kalian

Barths v. Rochanbas. (No.) -(1912) 13 Ind Cas 234 (235) (Mad). Narayana Nambs v. Krishnan Mossad. (No.)

⁽¹⁹¹⁶⁾ A I R 1916 Lah 321 (322): 31 Ind Cas 250, Janahir Singh v. Mehr Singh. (Date fixed for submission—Presentation of award before that date without knowledge of opposite party is not "submission".

the third column were substituted in 1919 for the words "when the award is submitted to the Court" and it is now clear that time runs only from the date when the award is filed in Court and notice of the filing has been given to the parties.

Where the arbitrator states a special case for the opinion of the Court, and the Court expresses its opinion, the date on which it so expresses its opinion must be taken to be the date when the "award is filed."²

A notice can, it is submitted, be said to be given to a party when such party receives the notice. A mere direction to issue notice is not giving any notice. The words "where notice has been given" show that it is not sufficient, in order that time may begin to run, that the party has received knowledge aliunde of the filing of the award. The Court must have given notice to the parties. Where on the date on which an award was filed in Court the defendant came late and applied for time for objections and the Court informed him that a decree had been passed in terms of the award and rejected his application, it was held that it could not be said that notice had been given to the defendant of the filing of the award.

A formal notice is, however, not necessary in order to start time running Where the award was brought in by the parties themselves and the Court informed them that they should file their objections within 10 days, it was held that notice must be taken to have been

- (1901) 5 Cal W N 813 (815), Nobin Kally Dabes v. Ambica Churn Banerjee.
- (1919) A I R 1919 Cal 224 (225) 46 Cal 721 . 53 Ind Cas 46, Soca Chand Enstora v Hurry Bux Decor (The word "submission" must be interpreted in the light of Para 10 of Sch 2 of the Code and time runs only when the award is "filed," 1 c. after the procedure in Para. 20 18 followed.)
 - (1917) A I R 1917 Nag 211 (212) 13 Nag L R 172 42 Ind Cas 266, Seetharam v. Rupram (Yes)
- (1915) A I R 1915 Lah 352 (352) · 28 Ind Cas 427, Sahib Ras v. Chart Ram.
 (Yes.)
- (1921) A I R 1921 All 63 (63). 63 Ind Cas 399, Sheo Prahash Bas v. Srs Ram Mahadeo. (Yes.)
- (1898) 20 All 474 (475). 1898 All W N 192, Chatarbhuj Dax v Ganesh Ram. (The Court is bound to give notice of the filing of the award to the parties)
- (1925) A I R 1925 Bom 22 (25) 48 Bom 663 84 Ind Cas 378, Lahshman Baburao v. Ramchandra Rajaram.
- 3. See (1930) A I R 1930 All 477 (478) 126 Ind Cas 14, Mohammad Thasin Khan v Basant Rai. (Quære)
- (1930) A I R 1930 All 477 (478) 126 Ind Cas 14, Mahomed Thasin Khan v. Basant Rai.
- (1930) A I R 1930 Lah 228 (229) 119 Ind Cas 331, Punnoo Eam v. Nebh Eag.
 - (1898) 20 All 474 (475) 1898 All W N 192, Chatarbhuj Das v Ganesh Pam. [See also (1923) A I R 1925 Lab 619 (619) 89 Ind Cas 240, Gurditta Mal v. Ferm of Bivanta Mal Panna Lal (1888) 11 Mal 144 (143), Eengasimy v Muthusimy]
- (1930) A I R 1930 Lah 228 (229) . 119 Ind Cas 331, Punneo Eart v Nebh Ear

Article 158 Notes 4-6 given "to the parties". Where the Conrt made an order: "Inform the parties of the filing of the award," and the Bench Clerk informed the parties accordingly, it was held that notice had been given. Similarly, where the parties were shown the order recording the award and their initials taken in acknowledgment of the fact that they bad notice, it was held that it was sufficient giving of notice."

The word "parties" is not confined to parties personally but would include their pleaders and duly authorized agents. A notice to such persons therefore is notice to the parties for the purposes of this Article.¹⁰

- 5. Extension of time. Section 5, Limitation Act, does not apply to applications to set asade an award and the Court has no power to enlarge the time within which such an application should be filed. But where an application containing an additional ground of objection to the validity of an award is filed beyond time in addition to the one filed within time, the Court has a discretion to allow the additional ground to be added by way of amendment or to entertain to dits own motion if it thinks that the ground was such as to render a reference to arbitration or the award based thereon absolutely invalid. Time may, however, he extended under Section 4, Limitation Act. The Court has power to extend the time allowed under Article 158 for supplying the necessary court-fee stamp on an application to set saide an award.
- 6. Exclusion of time. In computing the period of limitation, the time requisite for obtaining copy of the award can be excluded
- 7. (1926) A I R 1926 Bom 312 (312): 95 Ind Cas 547, Valchand Dipchand v. Gulba Laxman.
- 8 (1927) A I R 1927 Cal 619 (621) : 103 Ind Cas 625, Saroj Bala v. Jaimdra Nath.
- 9 (1927) A I R 1927 Pat 135 (139) 95 Ind Cas 321, Bholanath Roy v. Bata Krishna Boy v. Bata (See also (1918) 21 Ind Cas 298 (301) (Lah), Gulam Musiafa v. Holima Bibi)

Jaimara avata. (1927) A I R 1927 Pat 185 (189): 95 Ind Cas 321, Bholanath Roy v.

Bata Krishna Roy 1

Note 5

- (1914) A I R 1914 Cal 723 (724): 17 Ind Cas T, Surya Narain Jha v. Ban-tran Jha
 (1927) A I R 1927 Lab 273 (273): 8 Lab 274. 100 Ind Cas 955, Deri Ditta v.
 - (1927) Å I R 1927 Lab 273 (273) : 8 Lab 274 . 100 Ind Cas 955, Deci Dilla 4. Babu Ram. (1917) Å I R 1917 Nag 211 (212) : 13 Nag L R 172 . 42 Ind Cas 266, Silaram
- v. Rupram. 2. (1913) 20 Ind Cas 773 (774) · 16 Oudh Cas 233, Bhagwan Din Singh v. Fakir
- Singh.

 S. (1916) A I H 1916 Lah 321 (322): 34 Ind Cas 250, Jawahir Singh v. Mehr
- Singh.
 4. (1928) A I R 1928 Sind 67 (89): 23 Sind L R 91: 107 Ind Cas 223, Admali v.
 Addulat.

under the provisions of sub-section 4 of Section 12 ante. See Note 30 to Section 12.

Article 158 Notes 6 - 7

7. Effect of bar. - The Court has no power to pass a decree in terms of the award before the expiry of ten days allowed by Article 158 except by consent of parties in If a decree is passed before that period, the procedure is illegal and the decree is liable to be set aside.1

An objection to the validity of an award based on the reference is one which ought to be urged within 10 days as prescribed by Article 158 and when not so urged, the parties are precluded from relying on it in order to set aside the award and decree based on it 2

159.* For leave to Ten days. | When the appear and defend a suit under the summary procedure referred to in section 128 (2) (f) or under Order 37 of the same Code.

summons is served.

Article 159

Synopsis

- 1. Scope.
- 2. Extension of period fixed.
- 3. Starting point.
- 4. Rangoon Small Cause Court Rules 1922, Rule 101.

Act of 1877

159 -For leave to appear and defend | Ten days | When the summons a suit under Chipter 39 of the Code 14 screed of Civil Procedure

Acts of 1871 and 1859 No corresponding provision.

Note 7

1a (1918) 21 Ind Cas 298 (301) (Lab), Gulam Mustafa v Halona Bibi.

I (1908) 5 All L Jour 36 (s N)

(1922) A I R 1922 Mad 179 (180) 71 Ind Cas 266 45 Mad 466, Rengiah Chetty v Govendasamu Chetty

(1934) A I R 1934 Mad 619 (620) 152 Ind Cas 157, Subba Rao v Ramalin gayya (1921) A 1 R 1921 Oudh 148 (148) 64 Ind Cas 90 24 Oudh Cas 234. Mana

Rom v Ram Asrau (1921) A 1 R 1921 Oudh 154 (154) 62 Ind Cas 849 24 Oudh Cas 263, Sohan

Lal v Munna Lal

(1925) A I R 1925 Rang 103 (103) 76 Ind Cas 307, Achabar Pandes Enddip Singh (1911) 9 Ind Cas 197 (199) (Mad), Valu Pillar v Appasamı Pandaram

(1928) A 1 R 1928 Nag 166 (167) 107 Ind Cus 668, Ram Kumar v Kushalchand Ganeshdas

2. (1907) 1907 Pun W R No 20 (page 42) 1907 Pun Re No 4, Uda v Mal Chand

Article 159 Notes 1-4

- 1. Scope. Where a summary suit is filed under the provisions of Order 37 of the Cavil Procedure Code, the defendant is not entitled to appear and defend the suit unless he obtains leave of the Court to so appear and defend. (See Rule 2 of Order 37.) For this purpose he has to file an application. This Article prescribes the period of lumitation for such applications
- 2. Extension of period fixed.—The period fixed by the Article cannot be extended by the Court under the provisions of Section 148 of the Code of Civil Procedure.¹ The High Court may, however, under its rule-making powers, extend Section 5 of this Act to applications for leave to defend and where it has heen so extended, the Court may, for sufficient cause, excuse the delay in making the application. The Bombay High Court has so extended Section 5 to such applications It has also been held by the same High Court that, under Rule 193 of the High Court Rules, a discretion is vested in the Chamber Judge, in a fit case, to extend the period of ten days in cases to which Order 37 of the Civil Procedure Code is not applicable.
- 3. Starting point. The starting point is the date when the eummons is served.
- A, the defendant, in his application for leave to defend alleged that was served on 5.1.1896 and obtained an ex parte order granting the application. B, thin plaintiff, applied thereafter to the Court praying that the order granting leave may he set aside on the ground that the defendant was actually served on 23.12.1895 and that the defendant's application had been made beyond time. The Sheriff's return showed that A was served on 23.12.1895. A thereupon wanted to show that he was not served at all. It was held that, at that stage, A could not be allowed to do so, that the date of service must be taken to be the date mentioned in the Sheriff's return, and that the order granting the leave should be set aside.
- 4. Rangoon Small Cause Court Rules 1922, Rule 101.— It has been held by the High Court of Rangoon that Rule 101, in so far as it curtails the period of ten days prescribed by this Article for an application for leave to defend, is ultra vives to that extent.¹

Article 159 - Note 2

- (1901) 5 Cal W N 259 (262), Quazis Mahumdar Rohman v. Saiat Chundra Dutt
- 2 (1926) A I R 1926 Bom 578 (578) 97 Iad Cas 766, Mohanlal Manordas v. C K. Daruwala.

Nate 3

1. (1896) 23 Cal 573 (575), Madhub Lall Durgur v. Woopendra Narain Sen.

Nnte 4

1 (1936) A I R 1936 Rang 501 (503): 166 Ind Cas 148: 14 Rang 729, Ratilal Jamnadas Mehta v. V. Pragjee.

160." For an order Fifteen days. | When the under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing.

application for review is rejected.

Article 160

Sunopsis

1. Scope of the Article.

2. Starting point.

1. Scope of the Article. This Article prescribes the period of limitation for applications under Order 47 Rule 7 sub-rule 2 of the Code of Civil Procedure which provides as follows .

"Where the application" (1 e the application for review) "has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to file, and, where it is proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court shall order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit and shall appoint a day for hearing the same."

2. Starting point. - The starting point is the date of rejection of the application

The period fixed by the Article cannot be extended by the Court on any ground 1 See Notes to Section 3, ante

161. † For a review of Fifteen days. The date of judgment by a Provincial. Court of Small Causes or by a Court invested with the jurisdiction of a Provincial Court of Small Causes when exercising that jurisdiction.

Article 161

the decree

or order.

Act of 1877

160 - For in order under section 629 Lufteen days When the applicaof the same Code testering to the file a tion for review to rejected application for review rejected

Acts of 1871 and 1859

No corresponding provision Act of 1877, Article 160 A. Same as above.

Article 160 - Note 2

Article 161 Notes 1-4

Synopsis

- 1. Legislative changes,
- 2. Court of Small Causes.
- 3. "Review," meaning of.
- 4. Security deposit.

1. Legislative changes.

- 1. This Article was inserted as Article 160 A by Section 36 of Act 9 of 1887. Before the Article was so inserted, an application for review, in cases where the circumstances admitted of a new trial, had to be made within seven days of the date of the order under Act 21 of 1865. In other cases the application was governed by Article 173 of the Act of 1877 corresponding to this Article 1
- The words in the second column were substituted for the word "Ditto" by Section 2 and Schedule 1 of the Repealing and Amending Act 9 of 1923.
- Court of Small Causes. Under Section 24 sub-section 4 of the Oivil Procedure Code, a Court trying any suit transferred or withdrawn from a Court of Small Causes is, for the purposes of such suit, deemed to be a Court of Small Causes.
 - 3. "Review," meaning of. See Article 162 infra.
- 4. Security deposit. Section 17 of the Provincial Small Cause Courts Act 9 of 1887 requires that an applicant for a review of indigment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give such security for the performance of the decree or compliance with the judgment, as the Court may, on a previous application made by him in this behalf, have directed. The words "or in pursuance of the judgment" are be read distributively and applied to the words "for a review of the judgment" which precede it. I There was a divergence of opinion among the different High Courts before the Section was amended by Act 9 of 1935, as to whether the deposit of the decretal amount or

Acts of 1871 and 1859 No corresponding provision.

Article 161 - Note 1

1. (1684) 10 Cal 297 (298), Modon Mohun Poddar v. Purno Chunder Purbot

Note 2

 See (1917) A I R 1917 All 484 (485): 39 All 425: 34 Ind Cas 113, Chholey Lal v. Lakhm, Chand.

Note 4

(1923) A I R 1928 All 605 (606) . 45 All 569 : 74 Ind Cas 64, Girdhari Lal
 Firm Achal Singh Takhat Singh.

the furnishing of security was a condition precedent to the entertaining of the application. See the undermentioned cases2 which are now only of academical interest.

Article 161 Note 4

As to the applicability of Section 5 to applications for review of the judgment of a Court of Small Causes, see Notes to Section 5 ante.

162.* For a review of Twenty days. | The date of judgment by any of the following Courts, namely, the High Courts of Judicature at Fort William, Madras, Bomhay, Lahore, and Nagour and the Chief Court of Sind in the exer-

Article 162 the decree or order.

Act of 1877

162.—For a review of judgment by any of the High Courts of Judicature at Fort William, Madras and Bombay, or the Chief Court of the Punjab, or the Chief Court of Lower Burma, in the

exercise of its original jurisdiction.

cise of its original jurisdic-

tion.

Twenty days The date of the decree or order

Acts of 1871 and 1859 No corresponding provision

2 (1906) 28 All 470 (472, 473) 8 All L Jour 816 1906 All W N 93, Jagan Nath v Chet Ram (Proviso to S 17 is mandatory and deposit of security is condition precedent to entertaining of application)

(1928) A 1 R 1928 All 111 (111) 50 All 254 108 Ind Cas 464, Sura: Prasad Baldeo (Do)

(1891) 18 Cal 83 (85), Jogs Ahrr v Bishen Danal Singh (Do.)

(1917) A I R 1917 Cal 195 (196) 42 Ind Cas 751, Tarapada Ghose : Jagat Mohins Dass (Do)

(1922) A I R 1922 Mad 830 (332) 70 Ind Cas 496, Balakrishna Iver v. Pichas Muthu Pillas (Do) (1920) A I R 1920 Pat 111 (112) 56 Ind Cas 810, Eam Charitar Eam v.

Hashim Khan (Do) (1920) A 1 R 1920 Pat 470 (471) 54 Ind Cas 971. Khantar Poldar v. Punns

Naddaf (Do) (1926) A I R 1926 Oudh 544 (544) 97 Ind Cis 581, Dunia Din v. Farzand

Husain (Do) (1930) Â Î R 1930 Nag 137 (137) 26 Nag L R 63 116 Ind Cas 641, Chandulal v Hotald Ham Lal (100) (1933) A I R 1933 Nag 102 (103) 141 Ind Cas 613 29 Nag L R 104,

Maniklal Varma . Khushal Mali (Do)

(1910) 6 Ind Cas 915 (945, 946) 1910 Pun Re No 54, Rughu Nath Dis v Dector Panna La! (The words 'At the time of pre-enting the appli-cation' in the Proviso to Section 17 are directors and the Court has the discretion to extend the time in appropriate cases)

(1930) A I R 1930 All 830 (831) 128 Ind Cas 765 53 All 59, Moti Lal Ramchandar v Durga Prasad (Do)

(1919) A I R 1919 Lab 124 (125) 50 Ind Cas 917, Mulande Lal v Pars Ram. (Do)

-Artiole 162 Notes

Synopsis

- 1. Legislative changes.
- 2. Scope of the Article.

3. "Review."

- 4. "Original jurisdiction."
- 5. Application for review, when maintainable.
- 6. Starting point.

4. Legislative changes. — This Article was first enacted as Article 162 of Act 15 of 1877.

The words "the following Courts, namely" were inserted by Section 2 and Schedulo 1 of the Repealing and Amending Act, 1927 (10 of 1927).

The words "Bombay, Lahore, Rangoon and Nagpur and the Chref Court of Sind" were substituted for the words "and Bombay or the Chief Court of Sind, or the Chief Court of Pumpab or the Chief Court of Lower Burma" by the Repealing and Amending Act of 1927 and by Section 2 of the Central Provinces Courts (Supplementary) Act 8 of 1935.

The word "Rangoon" was omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. Scope of the Article. — Article 161 ante provides for applications for review of judgments of Small Cause Courts. This Article deals with applications for review of the judgments of the Courts specified in the Article in the exercise of their original jurisdiction. Article 173 mfra deals with applications for review of judgments except those specified in Article 161 and this Article.

The Article applies only to applications for review. A certificate of the Advocate General under Clause 26 of the Letters Patent (Cal) is not an application and consequently, a review made on such certificate is not governed by thus Article. Nor will this Article

(1931) A I R 1931 Lah 332 (334) . 131 Ind Cas 635 · 12 Lah 359 (F B), Ged.

Mal Dharam Das v. Huna Mal Shedhu Ram. (Do.) (1890) 18 Mad 178 (188) (F B), Ramasame v. Kurisu. (Do.)

(1919) AIR 1919 Mad 103 (103) : 53 Ind Cas 926, Akula Achiah v. Lakshmi-

narasımham. (Do.) (1920) A I R 1920 Mad 141 (142) · 55 Ind Cas 618, Suryanarayana Iyer v.

Soundararaja Iyengar. (Do) (1927) A I R 1927 Nag 165 (166): 99 Ind Cas 779, Vithu Mhali v. Vithu

(1927) A I R 1921 Nag 103 (160): 99 Ind Cas 719, 'think a nat V. Fran Mahadir. (Do) (1920) A I R 1920 Mad 562 (563): 43 Mad 579. 55 Ind Cas 977 (F B), Asan Md Salib v. Rahman Sahib. (The words are directory to this

extent that the deposit of security need not be made or tendered with the application, but this can be done within the period of limitation but not beyond it)

(1905) 32 Cal 339 (342) 1 Cal L Jour 43, Jenn Muchi v. Budhiram Muchi. (Do)

(1894) 1894 Pun Re No 108, Muhammad Fazal Alı v. Karım Khan.

Article 162 — Note 2

1 (1929) A 1 R 1929 Cal 617 (622) · 30 Crt L Jour 993 : 119 Ind Cas 193 : 1929 Crl Cas 228 (S B), Padam Prashad v. Emperor.

Article 162 Notes 2-4

govern a case where the Court reviews its judgment under its inherent powers.2

- 3. "Review."—The word "review" would prima facta seem to include a review, whether under the Cwil Procedure Code or under any other enactment. This, an application for review under Section 8 of the Presidency Towns Insolvency Act (3 of 1909) would be governed by this Article. This is the tieve of the High Court of Madras ¹ The High Court of Rangoon has, however, in the undermentioned case? held that the word "review" in this Article as well as in Article 173 must be confined to a jeview under Order 47 Rule 1 of the Civil Procedure Code and that it does not include a review under Order 45 to the Presidency Towns Insolvency Act. It is submitted that this view is not correct. No leason is mentioned in the said decision for departing from the application of the cardinal principle of interpretation of statutes that words must be constructed according to their plann meaning, unless by reason of such construction there is a renumancy with the other provisions of the statute
- It has been held that the High Court has, under the Ciminal Procedure Code, no right of a cieve in circumal cases, and that its inherent powers in such matters do not extend to reviewing a judgment. No question of the applicability of this Article would arise in such cases. See also Note 3 to Article 173, infig.
- 4. "Original jurisdiction." The original jurisdiction of the Chartered High Courts is derived from the Letters Patents issued to them The original junisdiction of the Judicial Commissioner's Court of Sind is derived from the provisions of the Sind Courts Act (Bombay Act 12 of 1866).

It has been held that the original jurisdiction of the Chartered High Courts would include matrimonial and involvency jurisdiction?

2 (1929) A I R 1929 Ondb 285 (387) 118 Ind Cas 753 4 Luck 562 (F B), Mahamed Bara v. Ram Sarroop [See (1901) 28 C-1 680 (684). 6 Csl W N 114, Punan Mal v. Janks Pershad Singh 1

Note 3

 (1924) A. I. R. 1924. Mrd. 662 (665). 83. Ind. Car. 174. Openil. Assignce of Madras v. Oficial Assignee of Pangum.

 (1929) A I R 1929 Rang 229 (232) 118 Ind Cts 1 7 Ring 201, In the matter of L W Nassee

8 (1928) A I R 1928 Lah 462 (463) 10 Lih 1 29 Cn L Jour 669 110 Ii d Cis 221, Papa v Emperor

(See also (1928) A I R 1928 Cal 307 (308) 56 Cri 32 114 Ind Cas 132 30 Cri L J. ur 224 Pameshi or Khinoriballa v Erreter (librh Cenri chuld not inder See 491, trium d l' C re tri question sateraly determined in inconsimal S de l

Note 4

1, (1892) 6 Bom 416 (434), Harriette A King v Jan es S Am ?

2 (1889) 13 Born 520 (533) 16 Ind App 15c - Sur 500 to Ind Jan 251 (P.C), In the matter of Cappes Nationals

Sunopsis

- Legislative changes.
- 2. Scope of the Article.
- 3. "Review."
- 4. "Original jurisdiction."
 - 5. Application for review, when maintainable.
 - 6. Starting point.

1. Legislative changes. - This Article was first enacted as Article 162 of Act 15 of 1877

The words "the following Courts, namely" were inserted by Section 2 and Schedule 1 of the Repealing and Amending Act, 1927 (10 of 1927).

The words "Bombay, Lahore, Rangoon and Nagpur and the Chief Court of Sind" were substituted for the words "and Bombay or the Chief Court of Sind, or the Chief Court of Punjab or the Chief Court of Lower Burma" by the Repealing and Amending Act of 1927 and by Section 2 of the Central Provinces Courts (Supplementary) Act S of 1935.

The word "Rangoon" was omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

2. Scope of the Article. - Article 161 ante provides for applications for review of judgments of Small Cause Courts. This Articlo deals with applications for review of the judgments of the Courts specified in the Article in the exercise of their original jurisdiction. Article 173 anfra deals with applications for review of judgments except those specified in Article 161 and this Article.

The Article applies only to applications for review. A certificate of the Advocate-General under Clause 26 of the Letters Patent (Cal) is not an application and consequently, a review made on such certificato is not governed by this Article.1 Nor will this Article

(1931) A I R 1931 Lah 832 (334) : 131 Ind Cas 635 · 12 Lah 859 (F B), Gedi Mal Dharam Das v. Huna Mal Shedku Ram (Do.)

(1890) 13 Mad 178 (188) (F B). Ramasami v. Kurisu. (Do.)

(1919) AIR 1919 Mad 103 (103) : 53 Ind Cas 926, Abula Achiah v. Lakshminarasımham. (Do)

(1920) A I R 1920 Mad 141 (142) . 55 Ind Cas 618, Suryanarayana Tyer v.

(1927) A I R 1927 Nag 165 (166): 99 Ind Cas 779, Vithu Mhali v. Vithu Mahadji. (Do) (1920) A 1 R 1920 Mad 562 (563) . 43 Mad 579 : 55 1nd Cas 977 (F B),

Assan Md Sakib v Rahiman Sakib. (The words are directory to this

extent that the deposit of security need not be made or tendered with the application, but this can be done within the period of limitation but not beyond it)

(1905) 32 Cal 339 (312) · 1 Cal L Jour 43, Jenn Much v. Budhiram Muchi.

(1894) 1894 Pun Re No. 103, Muhammad Fazal Ali v. Karım Khan. Article 162 - Note 2

1 (1929) A I R 1929 Cal 617 (622) 30 Gri L Jone 993 . 119 Jud Cas 193 : 1929 Cri Cas 228 (S B), Padam Prashad v. Emperor.

Other Topics

Article 163 Notes 1—2

Dismissal for default of appearance ... See Note 2, Pts 1 to 3
Dismissal for default without junsdiction—Article does not apply ... See Note 2,
Dismissal for failure to furnals security for costs ... See Note 2
Dismissal for failure to pay costs of service of process
Order pronouncing undernet under O 10R 4, C. P. G. See Note 2, Pts, 2, 3

Plaintiff not aware of dismissal—Starting point not affected See Note 8, Pt Plaintiff's death subsequent to dismissal for default—Legal representative does not get fresh starting point See Note 4, Pts. 1, 2

1. Legislative changes.

- There was no Article corresponding to this Article in the Act of 1859
- 2 Article 156 of the Act of 1871 corresponding to this Article provided merely for an order to set aside a judgment by default.
- 3 Article 163 of the Act of 1877 substituted the words "dismissal by default" for the words "indement by default."
- Scope of the Article. Article 168 infra applies to an application for the re-admission of an application for want of prosecution. This Article applies to an application by a plaintiff for an order to set saide.
 - 1 a dismissal for default of appearance,

Dismissal for default of appearance:

- 2 a dismissal for failure to pay costs of service of process, and
- 3. a dismissal for failure to furnish security for costs.

An order of dismissal of a suit for default of appearance may be made under Rules 3, 8 and 12 of Order 9 of the Code of Civil Procedure Rule 3 provides that where neither party appears when the suit is called on for hearing, the Court may make an outer that the suit be dismissed Rule 4 of the said Order empowers the plantiff in such a case to apply to have the dismissal set aside. Rule 8 provides that where the defendant appears but the plantiff does not appear the Court shall make an order that the suit be dramissed and Rule 9 empowers the plaintiff in such a case to apply to have the order of dismissal set aside. Rule 12 provides that where a plaintiff or defendant, who has been ordered to appear in person or show sufficient cause to the satisfaction of the Court, fails so to applear, he shall be subject to all the provisions of the previous Rules applicable to plantiff and defendants respectively who do not appear An application

under Rule 4 or Rule 9 of Order 9 would be governed by this Article.
Under Order 10 Rule 4 of the Civil Procedure Code the Court can,
under the circumstances specified therein, direct a party to appear
in Court on a particular date and can, on his failure so to appear

Article 163 - Note 2

 See (1896) 2 Cal W N 313 (319), Korlash Mondal v Nabadwsp Chandra Kar. (Rule 4.)
 (1903) 31 Cal 15 (154) ; S Cal W N 97, Hungabibee v. Munna Bibee. (Rule 9.)

Article 162 Notes 5-6

- 5. Application for review, when maintainable. See Section 114 and Order 47 Rule 1 of the Civil Procedure Code, and the decisions thereon.
- 6. Starting point.-Time, under this Article, runs from the date of the decree or order sought to be reviewed. The date of the decree is the date of the judgment. See Note 5 to Article 156, ante. Where, under the practice of the High Court a party has to apply to have the order drawn up and he fails to do so, he cannot escape the bar of limitation by reason merely of the fact that the order has not been drawn up.1

the dismis-

sal.

Article 163

163.* By a plaintiff | Thirty days, | The date of for an order to set aside a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs.

Synopsis

- Legislative changes.
- 2. Scope of the Article.
- 3. Application.
- 4. "By a plaintiff."
- "To set aside a dismissai."
- 6. "Appearance," meaning of.
- 7. Application for restoration itself dismissed for default.
- 8. Starting point.
- 9. Section 5 and this Article.
- 10. Section 12 and this Article.
- 11. Section 14 and this Article.
- 12. Court's inherent power to extend time.

Act of 1877

163 - By a plaintiff for an order | Thirty days. | The date of the dismissal. to set aside a dismissal by default.

Act of 1871

The date of the judgment. 156 - By a plaintiff for an order | Thirty days to set aside a judgment by default

Act of 1859 No corresponding provision.

(1928) A I R 1928 Mad 782 (733) 51 Mad 510 : 112 Ind Cas 149 (F B), In the matter of Kencherla Krishna Itao.

Note 6

(1938) A I R 1938 Cal 321 (323): I L R (1938) 2 Cal 22, Ritchson v. Ritch.

See Note 4, Pts. 1, 2

1-2

Other Topics

Dismissal for default of appearance Sen Note 2, Pts. 1 to 3 Dismissal for default without jurisdiction—Article does not apply ... Sen Note 2 Dismissal for failure to furnish security for costs ... Sen Note 2 Dismissal for failure to pay costs of service of process ... Sen Note 2 Dismissal for failure to pay costs of service of process ... Sen Note 2 Dismissal for failure to pay costs of service of process ... Sen Note 2 Dismissal for failure to pay costs of service of process ... Sen Note 2 Dismissal for failure to pay costs of service of the pay costs of service of process ... Sen Note 2 Dismissal for default—Legal representative of costs of pays and service of the pay costs of the pays of the pa

1. Legislative changes.

does not get fresh starting point ...

- There was no Article corresponding to this Article in the Act of 1859.
- Article 156 of the Act of 1871 corresponding to this Article provided merely for an order to set aside a judgment by default.
- Article 163 of the Act of 1877 substituted the words "dismissal by default" for the words "judgment by default."
- Scope of the Article. Article 168 infra applies to an
 application for the re-admission of an application for want of
 prosecution. This Article applies to an application by a plaintiff for
 an order to set aside
 - 1. a dismissal for default of appearance,
 - 2 a dismissal for failure to pay costs of service of process, and
 - 3. a dismissal for failure to furnish security for costs,

Dismissal for default of appearance .

An order of dismissal of a sun for default of appearance may be made under Rules 3, 8 and 12 of Order 9 of the Code of Civil Proceduro Rule 3 provides that where neither party appears when the sunt is called on for hearing, the Court may make an order that the sunt be dismissed. Rule 4 of the said Order empowers the plaintiff in such a case to apply to have the dismissal set sude Rule 8 provides that where the defendant supears but the plaintiff does not appear the Court shall make an order that the sunt be dismissed and Rule 9 empowers the plaintiff in such a case to apply to have the order of dismissal set saide. Rule 12 provides that where a plaintiff or defendant, who has been ordered to appear in person or show sufficient cause to the satisfaction of the Court, fails so to appear, he shall be subject to all the provisions of the previous Rules applicable to plaintiffs and defendants respectively who do not appear. An application under Rule 4 or Rule 9 of Order 9 would be governed by this Article 4

Under Order 10 Rule 4 of the Civil Procedure Code the Court can, under the circumstances specified therein, direct a party to appear in Court on a particular date and can, on his failure so to appear

Article 163 — Note 2

 See (1896) 2 Cal W N 318 (S19), Korlash Mondal v. Nabadury Chandra Kar. (Rule 4.)
 (1903) 31 Cal 150 (154) 8 Cal W N 97, Hungabeter v. Munna Dibee. (Rule 9.) Article 163 Note 2 without lawful exense, pronounce judgment against him. An order pronouncing judgment against a party under that Rule is appealable as an order under the provisions of Order 43 of the Code. The question has, however, arisen as to whether such an order may be considered to have been made under the provisions of Order 9 of the Code. According to the High Court of Madras such an order must be taken to have been made only under Order 10 Rule 4 and not under Order 9 and therefore no application will lie to set the order aside. The High Court of Allahabad has, on the other hand, beld that such an order, made where the plaintiff and his pleader are both absent, must be considered to have been passed only under the provisions of Order 9 and that therefore an oppleation will lie to set he order aside. If in such cases an application will lie to set aside the order of dismissal, it is conceived that this Article will apply to such applications.

Dismissal for failure to pay costs of service of process :

Au order of dismissal of a suit for failure to pay costs of service of process is made under Order 9 Rule 2 of the Civil Procedure Code which runs as followe:—

"Where on the day so fixed it is found that the summons has not been served upon the defendant in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, the Court may mote an order that the suit he dismissed.

"Provided that no such order shall be made although the summons has not been served upon the defendant, if on the day fixed for him to appear and answer, he attends in person or by agent when he is allowed to appear by ogent."

Rule 4 of the Order empowers the plaintiff, where such an order of dismissal has been made, to apply to have the order set aside, and such an application also would be governed by this Article.

Dismissal for failure to furnish security for costs :

Order 25 Rule 1 of the Civil Procedure Code empowers the Court, in the circumstances mentioned therein, to call upon the plaintiff to furnish security for the costs of the suit. Rule 2 sub-rule 1 of that Order provides that on the failure of the plaintiff to furnish such security, the Court shall make an order dismissing the suit. Suhrule 3 of Rule 2 however enables the plaintiff to apply to have the order set aside, and such an application also will be governed by this Article. Order 22 Rule 8 of the Givil Procedure Code empowers the Court under certain circumstances to order the assignee or the Receiver of an insolvent plaintiff to furnish security for costs and to dismiss the sunt on default of furnishing such security. Rule 9 of that Order provides for an application by the assignee or the Receiver to

 ⁽¹⁹²¹⁾ A I R 1921 Mad 417 (410): 63 Ind Cas 961, Chengara Chandu v. Chengara Raman Nair.

 ⁽¹⁹¹⁷⁾ A I R 1917 All 136 (136) : 42 Ind Cas 945, Chunni Lal v. Chakerphan.
 (1932) A I R 1932 All 595 (596) · 138 Ind Cas 618, Nandan Sahu v. Hari

set aside the order of dismissal. Such an application is, however, not within this Article as it cannot be said to be an application by the plaintiff, and also as a specific Article, namely Article 172, prescribes the limitation for such eases.

- Article 163 Notes 2—5
- 3. Application.—An application to the Registrar of the Original Side Iof the issue of a notice of motion under Rules 154 and 155 of the Original Side Rules of the Madras High Court is an application within the meaning of this Article. The fact that the affidavit supporting the application was sworn later, or because the notice of motion states a date which is beyond the statutory period as the date on which the application will be heard, will not affect the validity of the application.¹
- 4. "By a plaintiff," Where a sunt is dismissed for default of the plaintiff's appearance, and subsequently the planetiff dies, his legal representative does not get a fresh starting point for an application to set aside the dismissal. His application will, therefore, be barred under this Article if it is made beyond thry days of the order of dismissal. It has been held by the Judicial Commissioner's Court of Oudh that even where a Court dismissal the suit for default in ignorance of the death of the plaintiff, it was necessary for the legal representatives of the plaintiff to apply to set aside the dismissal within the time prescribed by this Article."
- 5. "To set aside a dismissal." The Article will apply only to a case where it is necessary for a plaintiff to set aside a dismissal for default against him. Where a dismissal for default is unthout jurisdiction, it is not necessary that it should be set aside within the thirty days prescribed by this Article. Where the plaintiff in a representative suit died and the Court dismissed the suit on the ground that other constructive plaintiff sailed to appear, it was held that the Court had no jurisdiction to make such an order and that it need not be set aside within the period prescribed by this Article? Similarly, where no date was fixed for the boaring of the out and in notice was given to the plaintiff of any such date, but the Court dismissed the suit for default, it was held that the application to set aside the dismissal was not one under Order 9 Hule 9, but one under Section 151 of the Civil Procedure Code, and was governed not by this Article 181."

Note 3

^{1 (1907) 17} Mrd L Jour 215 (216), S. P. R. S. Kuttayan Chetty v. Ellarga Chetty

Note 4

 ^{(1933) 146} Ind Cas 1001 (1002) (Oudh), Dhanpat Des v. Ram Rachhpil Singh

 ^{(1912) 14} Ind C1s 711 (713) (Oudh), Deb. Balhish Singh v. Habib Shah
 (1912) 14 Ind C1s 221 (222) (Oudh), Habib Shah v. Deb. Bax Singh

Nete 5

^{1 (1931)} A I R 1931 Mad 590 (591, 592) 51 Mad 770 132 Ind Cas 2:9, Mukammad Kanni Bouther v. Nama Muhammad Powther

^{2 (1935)} A I R 1935 Pesh 186 (188) 160 Ind Cas 457, Wt Zainab Bibi v. Bibara Lai

Artiole 163 Notes 8-9

- 6. "Appearance." meaning of .- See Order 3 Rule 1 of the Civil Procedure Code and the Notes thereunder in the Authors' Commentaries on the Civil Procedure Code
- 7. Application for restoration itself dismissed for default. - Where a suit is dismissed for default and an application for restoration thereof is also dismissed for default, the applicant is not debarred from making a fresh application for restoration of the suit. provided it is made within the period prescribed by this Article.1 Suppose now that the applicant applies for restoration of the application which was itself dismissed for default. Is such an application maintainable at all? And if maintainable, what is the period of limitation applicable to each applications? As to the first question there is a conflict of opinion among the various High Courts for a discussion of which see the General Note 2 under Order 9 of the Authors' Commentaries on the Civit Procedure Code (Second Edition).

In the undermentioned case2 it was held that such an application did not lie, but the application was treated as a second application to set aside the order of dismissal of the suit itself. As to the second question, there appear to he no decided cases on the point, but on principle it is conceived that this Article would not apply inasmuch as the application would not be one by the plaintiff in such cases. This would result in the application being governed by Article 181 of the Act which gives a period of three years, a result which would not have been contemplated by the Legislature. It is submitted that the absurdity of this rosult is an argument in favour of the view that Order 9 Rule 9 cannot be applied to an application to restore another auntication dismissed for default.

- 8. Starting point. Time, under this Article, runs from the date of dismissal. There is nothing in the Article about the date of knowledge as there is in Article 164. Hence an application filed boyond thirty days of the date of dismissal is barred, even though the plaintiff was not aware of the dismissal."
- 9. Section 5 and this Artiple. Section 5 of the Act has been made applicable to applications under Order 9 Rules 4 and 9 by the High Court of Bombay. An application under the said Rules may, in Bombay, he admitted after the period of limitation prescribed by this Article if the applicant satisfies the Court that there was sufficient cause for not making it within the period. In other

Note 7

1. See (1914) A.I.R. 1914 Mad 474 (439): 22 Ind Cas 689. Subba Riv v. Frahafaratnow. (In threease, however, the application was dismissed as layed a level made more than two months after the dismissal of the unit)

2. (1927) A 1 H 1937 Cal 534 (".w) - 54 Cal 405 : 103 Ind Cas ("), Sarat Krishna those v. first extrap Matra

Note 8

1. (1933) A I It 1933 But 557 (856) : 147 Ind Cas 179, Decruze v. Mrs. Pells.

Provinces where Section 5 has not been made applicable to such applications, a delay in presenting them cannot be excused under Section 5 of the Act.²

- Article 163 Notes 9-11
- 10. Section 12 and this Article. The time requisite for obtaining a copy of the order dismissing a sunt for default cannot he excluded under Section 12 of the Act in computing the period of thirty days presembed by this Article 1
- 11. Section 14 and this Article. Section 14 of the Act of 1877 provided that in computing the period of lumitation for an application, the time during which the applicant was prosecuting with due diligence another application in a wrong Court could be excluded. It was held in a case arising under that Act that time during which an applicant in an applectation under Section 102 of the Code (Order 9 Rule 8) was prosecuting a suit in a wrong Court could not be excluded. Under the present Section 14, such period can, if the other conditions of that Section are satisfied, be excluded.
- It was held by the High Court of Cafcutta in the undermentioned case⁵ that the time spent in obtaining copies of the judgment and order for the purposes of appeal under the wrong impression that an appeal lay may be excluded as time spent in prosecuting another proceeding in a wrong Court.

In Veerayya v. Sressilam, the High Court of Madras has held in a smilar case that though the period of obtaining copies night be evaluaded under Section 14, the period after obtaining copies and before filing the appeal in the wrong Court cannot be excluded under that Section

(But see (1925) A I R 1925 Bom 521 (521) 44 Bom 839 90 Ind Cas 510, Mahado v Lakhimmarayan (This case was, before Section 6 was extended to applications under Order 9 Rule 9)]

2 (1929) A I R 1920 All 127 (128) 51 All 487 . 113 Ind Cas 767, Kalt Prasad v. Parameshuar Prasad

> erayya v. Sreesailam. Ind Cas 193, Saba v.

Dayaram.

(1933) A I R 1933 Pat 557 (558) · 147 Ind Cas 179, D'Cruze v Mrs Pills. (1924) A I R 1924 Ring 274 (275) · 82 Ind Cas 418, S. G M Samson v

5111 order. (1925) A I R 1925 Rang 187 (188) 2 Rang 655 85 led Cat 324, Ma Naw v.

Somasundaram Chefty
[See however (1923) A I B 1923 Mad 489 (490) . 72 Ind Cas 13,

[See however (1923) A 1 K 1923 Mad 489 (490) . 72 1nd Cas 1: Kalyanasundarappa Chinnasamy]

Note 10

1. (1926) 93 Ind Cas 1923 (1923) (Lah), Mohan Lal v Sher Muhammad Khan. Note 11

- 1. (1596) 1886 Pun Re No 63, Sheop Ram v Sheo Chand Pou
- 2, (1910) 7 Ind Cas 775 (776, 777) (Cal), Lalshiram Wandal v Scratur, Parar.
- 3. (1928) A I R 1929 Mad 556 (557) 110 Ind Cas 47.

Article 163 Notes 6._9

- 6. "Appearance," meaning of. Sea Order 3 Rule 1 of the Civil Procedure Code and the Notes thereunder in the Authors' Commentaries on the Civil Procedure Code
- 7. Application for restoration itself dismissed for default. - Where a suit is dismissed for default and an application for restoration ther ... debarred from

provided it is r Suppose now that the applicant applies for restoration of the application which was itself dismissed for default. Is such an application maintainable at all? And if maintainable, what is the period of limitation applicable to such applications? As to the first question there is a conflict of opinion among the various High Courts for a discussion of which sea the General Note 2 under Order 9 of the Authors' Commentaries on the Civil Procedure Code (Second Edition).

In the undermentioned case it was held that such an application did not lie, but the application was treated as a second application to set aside the order of dismissal of the suit itself. As to the second question, there appear to be no decided cases on the point, but on principle it is concaved that this Article would not apply inasmuch as the application would not be one by the plaintiff in such cases, This would result in the application being governed by Article 181 of the Act which gives a period of three years, a result which would not have been contemplated by the Legislature It is submitted that the absurdity of this result is an argument in favour of the view that Order 9 Rule 9 cannot be applied to an application to restore another application dismissed for default.

- 8. Starting point. Time, under this Articla, runs from the date of dismissal. There is nothing in the Article about the data of knowledge as there is in Article 164 Hence an application filed beyond thirty days of the dato of dismissal is barred, even though the plaintiff was not aware of the dismissal.1
- 9. Saction 5 and this Article. Section 5 of the Act has been made applicable to applications under Order 9 Rules 4 and 9 by the High Court of Bombay. An application under the said Rules may, in Bombay, be admitted after the period of limitation prescribed by this Article if the applicant satisfies the Court that there was sufficient cause for not making it within the period. In other

Note 7

1 See (1914) A I R 1914 Mad 438 (439): 22 Ind Cas 690, Subba Rao v. Venkataratnam. (In this case, however, the application was dismissed as having been made more than two months after the dismissal of the suit) 2. (1927) A I R 1927 Cal 534 (536) : 54 Cal 405 : 103 Ind Cas 69, Sarat Krishna

Bose v Bisweswar Mitra.

Note 8

1. (1933) A I R 1933 Pat 557 (558) : 147 Ind Cas 179, Decruse v. Mrs. Pelis. Note 9

1. (1929) A I R 1929 Bom 262 (263) : 53 Bom 453 : 122 Ind Cas 76, Pandarinath v. Thakoredas.

Provinces where Section 5 has not been made applicable to such Section 5 of the Act.2

applications, a delay in presenting them cannot be excused under

10. Section 12 and this Article. - The time requisite for obtaining a copy of the order dismissing a suit for default cannot be excluded under Section 12 of the Act in computing the period of thirty days prescribed by this Article 1

11. Section 14 and this Article. - Section 14 of the Act of 1877 provided that in computing the period of limitation for an application, the time during which the applicant was prosecuting with due diligence another application in a wrong Court could be excluded It was held in a case arising under that Act that time during which an applicant in an application under Section 102 of the Code (Order 9 Rule 8) was prosecuting a suit in a wrong Court could not be excluded.1 Under the present Section 14, such period can, if the other conditions of that Section are satisfied, be excluded,

It was held by the High Court of Calcutta in the undermentioned case? that the time spent in obtaining copies of the sudgment and order for the purposes of appeal under the wrong impression that an appeal lay may be excluded as time spent in prosecuting another proceeding in a wrong Court

In Veerayya v. Sreesarlam,3 the High Court of Madras has held in a similar case that though the period of obtaining comes might be excluded under Section 14, the period after obtaining conies and before filing the appeal in the wrong Court cannot be excluded under that Section

But see (1925) A I R 1925 Bom 521 (521) 44 Bom 839 90 Ind Cas 610, Mahadeo v Lahshiminarayan (This case was, lefore Section 5 was extended to applications under Order 9 Rule 9,)]

2 (1929) A I R 1929 All 127 (128) 51 All 487 . 113 Ind Cas 767, Kals Prasad , Parameshuar Prasad

(1902) 1902 Pun Re No. 83, Sahib Ditta v. Roda.

(1897) 1897 Pun Re No 15, Nur Muhammad . Dina

(1879) 1879 Pun Re No. 141, Mah. v. Januare

(1928) A I R 1928 Mad 536 (557) 110 Ind Cas 47, Teerayya v. Sreesailam. (1928) A I R 1928 Nag 91 (92) 23 Nag L R 183 107 Ind Cas 193, Saba v Danaram.

(1933) A I R 1933 Pat 557 (558) . 147 Ind Cas 179, D'Cruze . Mrs Pills (1924) A I R 1924 Rang 274 (275) 82 Ind Cas 418, S. G M. Samson v

Siliaran. (1925) A I R 1925 Rang 187 (188) 2 Rang 655 85 Ind Cas 324, Ma Nate v Somasundaram Chetty.

(See however (1923) A I R 1923 Mad 489 (490) 72 Ind Cas 13. Kaluanasundarappa . Chinnasamy]

Nets 10

1. (1926) 93 Ind C1s 1023 (1023) (Lah), Mohan Lal v Sher Muhammad Khan. Nete 11

1. (1886) 1886 Pun Re No 63, Sheep Ram v Shee Chand Ron

2. (1910) 7 Ind Cas 775 (776, 777) (Cal). Lalsheram Mandil . Smalun Pasar. 3. (1928) A I R 1928 Mad 556 (557) . 110 Ind Cas 47.

Lim. 146

Article 163 Notes 9-11

Artiole 163 Note 12

12, Court's inherent power to extend time. - A Court has no inherent power to extend the period of limitation under this Article. See also Notes 3 and 28 to Section 3, ante.

Article 164

164. By al Thirty days. | The date of the decree, defendant, for an order to set aside a decree passed ex parte.

or where the summons was not duly served, when the applicant has know-ledge of the decree.

Synopsis

- 1. Legislative changes.
- 2. Scope of the Article.
- 3. Ex parte decree under the Provincial Small Cause Courts Act. 1887.
- 4. "Defendant," if includes his legal representative.
- 5. Starting point.
- 6. "Summons," meaning of.

Act of 1877 164 .- By a defendant for an order | Thirty days.

to set aside a judgment ex parte. Act of 1871, Article 157 The date of executing any process for enforcing the judgment.

Same as in the Act of 1877. Act of 1859 No corresponding provision.

Note 12

- 1. (1931) A I R 1931 Cal 319 (320) 129 Ind Cas 778, Madha Ram v. Mt. Tuppo Rubhani.
 - (1936) A I R 1936 Lah 495 (496) : 163 Ind Cas 274, Mt. Karam Behari v. Jagannath.
 - (1925) A I R 1925 Lah 321 (321) : 86 Ind Cas 256, Firm Dunichand Golaschand v. Pritam Das.
 - (1920) A I R 1920 Lah 346 (347) : 55 Ind Cas 55, Bano Mal v. Bano Mal. (1926) A I R 1926 Mad 980 (983) : 50 Mad 67 : 97 Ind Cas 1009. Narayana
 - Chettiar v. Muthu Chettiar. (1933) A I H 1933 Mad 259 (259): 143 Ind Cas 240, Sundaresa v. Subba Rao.
 - (1928) A I R 1928 Nag 91 (92) . 23 Nag L R 183 : 107 Ind Cas 193, Saba v. Dayaram
 - (1935) A 1 R 1935 Rang 466 (471) * 13 Rang 595 : 159 Ind Cas 915, K. P. L. S. S. Chettiar v. Official Receiver, Ramnad.
 - (1924) A I B 1924 Rang 274 (275): 82 Ind Cas 418, S. G. M. Samson v. Silvaran.

[See alw (1925) A 1 R 1925 Oudh 105 (106): 80 Ind Cas 75, Shamshad Mehds v. Mahbub Kham. (Suit dismissed against two defen-dants, restored as against one defendant on plaintid's applicatron - Court on its own initiative restoring suit against the other defendant terond limitation - Held, order was ultra tires 11

- Service of summons referred to is service on the original defendant.
- 8. "Knowledge of the decree."
 - 9. Extension of time.
- 10. Exclusion of time under Section 14.
- 11. Section 18 and this Article.
- 12. Section 22 and this Article.
- 13. Parties to application.
- 14. Onus of proof.
- 15. Subsequent application.

Other Topics

Application to set uside az parts decree not to be altered to one for review to avoid limitation See Note 9, F-N (1) ... Article applies only to application but not to suit to set aside ex parte decree ... See Note 2, Pts 7a, 8 "Decree" limited to decree passed in suif See Note 2 Defendant must apply See Note 2, Pt. 9 Defendant must have right to apply See Note 2 Due service---What is . See Note 5 and F-Ns (3) to (6) Substituted service - If due service ... See Note 5. Pts. 6 to 8 and F-N (4)

1. Legislative changes.—There was no provision corresponding to this in the Act of 1859. Section 119 of the Code of Civil Procedure, 1859, however, provided that an application to set saide an exparte decree should be made within 30 days "after any process for enforcing the judgment has been executed" sagnast the defendant.

Summons duly served-Applicant's knowledge is immaterial ... See Note 5, Pt. 2

The provision as to limitation in Section 119 of the Code of 1859 was enacted as Article 157 in the Act of 1871, the 30 days' period being made to run as before from the date of excenting any process for enforcing the judgment

The Article was re-enacted without any change in the Act of 1877.

In the present Act, the word "judgment" which occurred in the corresponding provisions of the previous Acts has been substituted by the word "decree". The third column has been materially altered

- 2. Scope of the Article. In order that this Article may apply
 - 1 There must be an ex parte decree against a defendant
 - Such defendant must have a right to apply to have such decree set aside.
 - J There must be an application by the defendant made for that purpose
- Ex parte decree against a defendant The word "decree" interpreted in the light of the words "where the summons was not duly served" in the third column of the Article seems to be limited to a decree passed in a suit. This is also made clear by the fact that

Article 164 Notes 1—2

Article 164 Note 2

an application by a respondent to set eside an appellate decree passed ex parte is separately provided for by Article 169 infra, under which time runs from the date of the decree in appeal or where notice of the appeal is not duly served, when the applicant has knowledge of the decree. An order having the force of a decree in a proceeding which is unt a snit would therefore not be a "decree" within the meaning of this Article. Thus, an application to set aside an exparte order in execution which has the force of a decree under Section 47 of the Civil Procedure Code is not governed by this Article. This is borne ont by the enactment in Madras of Rule 15 of Order 9 of the Civil Procedure Code providing a period of limitation for such applications.

It does not, however, seem necessary that the suit and the decree should be under the Civil Procedure Code. Where under any enactment, as for example Section 295 of the Succession Act, a particular proceeding is to take the form of a suit and the order passed is to be cultured as a decree, an application to set asido such a decree passed ex parte will be governed by this Article.

It would follow from the above discussion that an application to set eside an order which does not amount to a decree at all in any sense cannot be governed by this Article. Thus, an application to set aside an ex parte order under Section 152 of the Civil Proceduro Code.2 or under Section 150 of the Companies Act 1882,3 or under Order 21 Rule 50 sub rule 2 of the Code of Civil Procedure. 3a is not within this Article. A contrary view has, however, been expressed in some cases. The High Court of Lahore has held in the undermentioned case that an application to set aside an ex narte order of adjudication of an insolvent must be made within the period prescribed by this Article, According to the Sind Judicial Commissioner's Court, the Article is not necessarily restricted to applications to set aside decrees passed in suits, but applies to applications under Order 9 Rule 13 read with Section 141 of the Code of Civil Procedure, for example, to applications for filing an award under the Arbitration Act. This view was rested on the decision of the Madras High Court in Subbiah Naicher v. Ramanathan Chettiar. Subbiah Naicher's case has, however, now been overruled by a Full Beach decision of

Article 154 — Note 2

See (1915) A I R 1915 Cal 65 (86): 24 Ind Cas 27: 41 Cal 819, Abhoyacharan v. Saroja Sundari.

^{2. (1933)} A I R 1933 Rang 264 (265): 145 Ind Cas 623, W. H. Laurence v. Diwan Singh.

^{3 (1920)} A I R 1920 Lah 54 (53) - 1 Lah 187 : 55 Ind Cas 820, Handustan

Bank Ltd v. Meharaj Dnn. 31(1929) A I R 1929 Bom 386 (388) - 53 Bom 839 : 120 Ind Cas 833, Kanji

Shieji v. Vasanji Shieji & Co. 4. (1932) A.I. R. 1932 Lah 522 (523) · 133 Ind Cas 877, Umar Din v. Rajhu Nath Sahi.

^{5 (1921)} A I R 1924 Sind 56 (56): 75 Ind Cas 1035, Fleming Shaw & Co. v. Mangalchand Dwarkadas.

G (1914) A I R 1914 Mad 162 (169) : 87 Mad 462 : 22 Ind Cas 899.

the same Court, and is no longer law. It is submitted that the decisions of the Lahore and Sind Courts referred to above are not correct on principle.

- 2. Defendant must have a right to apply Unless there is a right to apply to set aside the exparte decree, it is clear that no application will he at all and consequently there is no room for the applicability of this Article. In the case of decrees passed in suits, Order 9 Rule 13 gives a right to the exparte defendants to apply to set aside such decrees under certain circumstances. In the case of other proceedings, if Section 141 of the Code of Civil Procedure applies to such proceedings, Order 9 Rule 13 may apply to orders passed therein which may amount to decrees. But, as has been seen already, the "decree" contemplated by this Article is a decree in a suit and not in any other proceeding, and in that view this Article would be inapplicable.
- 3. Defendant must apply.—The Article applies only to an application to set aside the exparte decree.⁷⁸ It does not apply to a suit to set aside such decree on the ground of fraud. Further, such application must be made by a defendant An application, for example, for evocation of a publie of a will by a person who was not cited in the probate proceedings (which is to be in the form of a suit under Section 295 of the Succession Act) and therefore was not a "defendant" in such proceedings, is not governed by this Article.⁹
- It has been held by the High Court of Calcutta that the provisions of Order 9 Rule 13 of the Civil Procedure Code do not in terms apply to proceedings on the Original Side of the High Court and that consequently an application to set aside a decree filed on the Original Side of the High Court is not governed by this Article 10
- 3. Ex parte decree under the Provincial Small Cause Courts Act, 1887.—Before the amendment of Section 17 of the Provincial Small Cause Courts Act in the year 1935, there was a conflict of opinion on the question whether the deposit or security required to be made or given by that Section should accompany the application or may be made or given within the period prescribed by this Article or whether the Court could grant time for that purpose even beyond the 30 days prescribed by this Article ¹ The amendment of the
 - (1931) A I R 1931 Mail 656 (658) 61 Mad L Jour 319 (354) 55 Mad 17 R
 134 Ind Cas 806 (F B), drumackallam v Verapye Chettar (A I R 1914 Mad 162, A I R 1926 Mad 412, A I R 1929 Mad 757, Considered)
- 7a (1935) A I R 1935 Cal 95 (96) 154 Ind Cas 414, Abbasalı v Ram Kanaı (1918) A I R 1918 Vid 515 (517) 42 Ind Cas 421, Sundaram Reddy v Pattabharam Reddy v
- 8 (1896) 26 Cil 826n (332n) 3 Cal W N 395, Motilal Chuckerbutty v. Busnel, Chandra Bairagi
- 9, (1915) \ I R 1915 Cal 85 (86). 41 Cal 819 21 Ind Cas 25, 45hoya Charan v Saroja Sundari 10 (1925) \ J I R 1918 C11 864 (865) 116 Ind Cas 631, Rampan .th Han v
- 10 (1928) A. I. R. 1928. Cri. 864 (865). 116. Ind. Cas. 633. Eamjan. Ali. Haji. Hajis Abdul Gaffur. (A. I. R. 1928. Cal. 772. Followed.)

Note 3

For a full discussion of the conflicting views, see (1931) A I R 1931 Lab 322 (335) 131 Ind Cas 635 12 Lab 359 (F B), Geds Mat v. Huna Mal.

Article 164 Notes 2—3 Article 164 Notes 3-4 Section in 1935 has now set the conflict at rest and unless the deposit or the security, as the case may he, accompanies the application, there is no valid application on which the Court can act. The Court cannot now extend the time for making such deposit or for giving such security.

4. "Defendant." if includes his legal representative .- The word "defendant" in this Article would also include his legal representative so that an application by the legal representative of a defendant against whom an ex parte decree has been passed to set aside such decree, would be governed by this Article.1a Thus, it has been held by the High Court of Madras that the word "defendant" in this Article is wide enough to include the executor of the original defendant against whom an ex parte decree has been passed and that he can apply to set aside the decree within the time allowed by this Article, whether he has been made a party to the suit or not, or whether he has been brought on record or not at the time when the application is made. It has also been held in cases arising under Order 9 Rule 13 of the Civil Procedure Code, that the word "defendant" in that Rule would include his legal representative and that such local representative can apply to have the decree set aside under that Rule.2

[See also (1933) A I R 1933 All 933 (934) · 147 Ind Cas 858, Ahmad Yar Khan v. Kheyali. (Application to set aside ex parts decree —Security bond filed in time but verified late—Validity of.) (1992) A I R 1922 Mad 330 (332) · 70 Ind Cas 400, Balakrukna Aiyar

v. Pichamuthu Pillai. (Security must be given within 30 days)
(1930) A I R 1030 All 830 (831): 53 All 59; 128 Ind Cas 765, Mots Lai

(1930) A I R 1930 All 830 (831): 53 All 59: 128 Ind Cas 755, Mots Lat Ramchandar v. Durga Prasad.

(1931) A I R 1931 All 727 (733): 54 All 154: 136 Ind Cas 609 (FB), Ram Bharose v. Ganga Singh

(1928) A I R 1928 All 607 (608) : 51 All 402 : 111 Ind Cas 719, Kıran Koomar v. Basj Nath.

(1930) A I R 1930 Oudh 1 (2): 122 Ind Cas 329: 5 Luck 294, Narain v Pudan.]

 (1938) A I R 1938 Lah 18 (19): I L R (1937) Lah 728. 173 Ind Cas 952, Mohammad Ramzan Khan v. Khubi Khan.
 (Bul see (1936) A I R 1936 Tesh 193 (194): 167 Ind Cas 479, Jugal

Kishore v. Abdul Hinan. (The amendment was not adverted to in this case.)]

3 (1938) A I R 1938 Lah 18 (19) · I L R (1937) Lah 728 . 173 Ind Cas 952, Muhammad Ramzan Khan v. Khubi Khan.

[Bul see (1937) A I R 1937 Outh 206 (207) · 196 Ind Cas 187, Din Muhammad v. Darbara Lat. (The amendment of S. 17 in 1935 was not adverted to in this case)

(1936) AIR 1936 Oodh 407 (409) · 161 Ind Cas 470 . 12 Luck 287.

Mahabu v Shee Saran. (Oo)

Note 4

1a (1925) A 1 R 1925 Oudh 370 (371): 27 Oudh Cas 299: 85 Ind. Cas. 529, Mt. Deols v. Jugal Kishore.

(1915) A 1 R 1915 Mad 1201 (1205) 21 Ind Cas 568; 38 Mad 442, Venkatasubber v. Krishnamurliy. 1. (1915) A 1 R 1915 Mad 1201 (1205), 21 Ind Cas 568; 38 Mad 112, Venkata-

subbier v. Krishnamurthy. (29 Cal 33 Followed)
2. (1902) 29 Cal 33 (36), Ganoda Prasad Boy v. Shib Narain Mukerjee.

In Doraisamy Iyer v. Balasundaram Iyer, it has been held that Section 146 of the Orill Procedure Code refers only to taking proceedings or making applications and not to continuing proceedings or applications already started, and that therefore, the legal representative of a defendant who has died after making an application to set aside an exparte decree against birm, cannot continue such application. It has also been held in the same case that even assuming that Section 146 of the Civil Procedure Code applies to the case, the applicant cannot continue the proceedings maximuch as there was no possibility of proving that the defendant had knowledge of the decree within the thirty days preseribed by this Article.

5. Starting point.—Under the provisions in the previous Acts corresponding to this Article, time for an application to set aside an ex parte decree ran from the date of executing any process for enforcing the judgment.¹⁵

Under the present Article, time runs from the date of the decree, or where the summons was not duly served, from the date when the

(1923) A I R 1923 All 80 (80) 83 Ind Cas 601, Mt Banco v Hardwars Lal. (1907) 29 All 574 (675) 1907 All W N 176 4 All L Jour 480, Bets Jeo v. Sham Bhars Lal.

See also Note 16 to O 9 R. 13 of the Authors' Commentaries on the Civil Procedure Code

3. (1927) A I R 1927 Mad 507 (508): 102 Ind Cas 243.

Note 5

1a (1867) 7 Suth W R 198 (198), Radha Benode Chowdhry v. Modhoo Soodun Sircar (Section 119 of the Code of 1859).

(1806) 6 Suth W R Mis 51 (51), Shib Chundar Bhadure v. Lackee Debia Choudhrain (Do)

(1867) 7 Suth W R 375 (375), Shaikh Gholam Ahyak v Sham Soondur Koonwares (Do.)
 (1808) 9 Suth W R 236 (239) Beng L R Sup Vol. 947 (FB), Fadha Bindoe

Choudhry & Digumburee Dossee (Do L. (1870) 13 Suth WR 436 (437), Shumboo Chunder Holdar & Ram Lall Chose

(1871) 15 Suth W R 210 (211), Sookh Moyee Dossee v. Nurmooda Dossee. (1876) 25 Suth W R 72 (78), Kals Prasad v. Digambur Chatteriee

(1809) 1869 Pun Re No. 3, Mt Googree v Ruttun Chand Puree

(1878) 1878 Pun Re No 32, Chowdre Heat v Jas Kishen.

(1876) 2 Cal 123 (124), Poerno Chunder Coondoo v Provenno Coonar Sildar.
 (Act of 1871)
 (1906) 1906 Upp Bur Rul 2nd Qr Lim. 7, Nga Tha Din Mi Tiu v. Nga Po

Chan (Act of 1877)
(1910) 6 Ind Cas 400 (400) 31 Mad 88, Suryanarayana v Famanna (Do.)
(1897) 1897 Pun Ro No. 5, Ishra Sunth v Jhanda (Do.)

(1905) 1905 Pun L R No. 110, Gurandutta v Ziyada (4 notice served under S 243 is an execution of a process for enforcing judgment)

(1983) 9 Cal 869 (870), Blockunessury v Judobendra Naram Mullict (Do.) (1984) 1884 All W N 322 (322), Packu v. Jas Kishen (Do.)

(1885) 7 All 345 (353) 1885 M. W. N. 73, Har Pracad v Jafar Als. (Do.) (1884) 6 All 144 (147) 1884 All W. N. 1, Sunray Kuars v. Anbela Pracad

Singh (Do) (1898) 20 All SH (314) 1898 All W N 45, Mular rad Khan v Hannart Singh (Do)

(1888) 1888 Bom P J 56 (56), Ear p v Earsys. (Do)

(1907) 31 Pom S03 (307) . 9 Pom L R 323, Hanr ant v. Shanlar (Do)

Article 164 Notes 4—5

Article 164

applicant has knowledge of the decree. It must be noted that time will run from the date of knowledge only where the summons is not duly served. Where the summons is duly served, the date of the applicant's knowledge of the decree is immaterial and time will run from the date of the decree.²

The second part of this Article comes into operation only where the application is made more than thirty days after the passing of the decree, and the applicant pleads that he had not heen duly served and had knowledge of the decree only within thirty days from the day on which he made the application. The question therefore arises as to when a summons may he said to be duly served in law. Order 5 of the Civil Procedure Code prescribes the various modes in which a service may be effected. If the service is effected in the prescribed mode, it is clear that there has been a "due service." The applicant may show that as a matter of fact there was no due service, i.e., service in the manner prescribed by law. But if he does not show this and prima facie the record shows that the prescribed procedure

- (1906) 8 Bom L R 567 (569), Sidharthari v. Anantram. (Do.)
- (1912) 17 Ind Cas 420 (420) 15 Oudh Cas 280, Rajab Als Shah v. Upper India Paper Mills Co. Ltd. (Attachment of debt due to judgmentdebtor is an excention of a process for enforcing judgment.)
- (1910) 8 Ind Cas 663 (666) (Mad), Chidambara Thevan v. Arunachalla Thevan. (Do.)
- (1923) A I R 1923 Nag 13 (14) · G9 Ind Cas 549, Panjab Rao v. Daliram
 (1928) 108 Ind Cas 753 (754) (Mad), Subramania Iyer v. Krishnasany
 Naidu.
 - (1926) A I R 1926 Mad 558 (559): 94 Ind Cas 420, Doraisamy Aiyar v. Balasundaram Aiyar.
 - (1912) 13 Ind Cas 642 (642) (Mad), Sanka Iyer v. Subbiah Iyer.
 - (1926) A I R 1926 Cal 327 (329): 91 Ind Cas 965, Baldeodas Lohea v. Shubcharandas Goenka.
- 2 (1925) A I R 1925 Bom 444 (445): 89 Ind Cas 223, Ghanshiram Baluram v. Misrilal Chunilal.
 - (1932) A I R 1932 Oudh 326 (327) : 141 Ind Cas 759, Har Charan Seth v. Muhammad Azzenllah.
 - (1916) A I R 1916 Cal 651 (652) . 29 Ind Cas 476, Tara Sanhar Ghose v. Nasarudda.
- (1930) A I R 1930 Lah 397 (393): 129 Ind Cas 689, M₁₇ Ahmed v. Per Bahhih (Party who is cognizant of proceedings against him is duly served when after failure to effect personal service, proclamation is published in newspapers.)

Article 164 Nots 5

has heen followed, the defendant cannot claim any extension of the period of thirty days from the date of the decree on the ground that, really he had no knowledge of the decree. The above principles will apply to service of summons in any of the modes prescribed by Order 5 of the Code and will therefore apply also to the case of substituted service prescribed by Order 5 Rule 20 of the Code. The general trend of opinion accordingly is that substituted service is "due service" unless it is shown that the procedure prescribed for effecting such service has not been followed, and that time in such cases will run from the date of the decree and not from the date when the applicant has knowledge of the decree.

(1934) A I R 1934 Cal 745 (746) 152 Ind Cas 830, Kedar Mull v. Wazifun-

711354 (1938) A I R 1938 Oudh 11 (12) . 171 Iod Cas 617, Gajadhar v Uma Datt. (1931) A I R 1931 All 727 (729) 54 All 154 136 Ind Cas 600 (FB). Raws

Bharose v. Ganga Singh. (1913) 19 Ind Ots 425 (426) 9 Nag L R 35, Habibullah v Karanju See also casse sted in Poot-Notes (5, 6), below

 (1928) 109 Ind Cas 753 (754) (Med), Subramaniya Iyer v Krishnasu ami Naidu

[See also (1914) A I R 1914 Smd 109 (110) 27 Ind Cas 351 8 Sin

dant to appear and answer on the day fixed in the summons)

(1017) A I R 1917 Sand 27 (28) 42 Ind Cas 611 . 11 Sind L R 71,

Kesorchand v Lakhausa. ("Duly served" means served in such
a way as to gue the defendant information of the proceedings,
1 o duly served within the meaning of the term as used in
0 5 R 19 1)

6 (1927) A I R 1927 Mad 487 (188) 101 Ind Cas 651, Narasunha Cheltiar v. Balahrishna Chetty

(1927) A I R 1927 Mad 507 (508) 102 Ind Cas 213, Doraisnamy Iyer v. Balasundaram Iyer

(1928) A I R 1928 Mad 815 (816) 51 Mad 860 110 Ind Cas 400, Shariba Beeby v. Abdul Salam.

(1930) A.I. R. 1930 Mad 222 (224) 122 Ind Cas. 35, Krishna Padapach v. Vunayda Samujur (in the case of substitated serve, the Article lays down that when the order is rightly made and the service directed by the order is propelly effected, knowledge of the defendant is immaterial and time runs from the date of the decree Where however, an order for substituted service is impropely obtained, as hing made on insufficient material contained in an application supported by affacts, the summons cannot be easile back even distributed which is the service with the summon summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer summer

(1931) A I R. 1931 Mad 812 (818). 55 Mad 240: 135 Ind Cas 344, Muhandin Kadar Weren Sahib x Ledshumanna Chettuar (There may to circumstances under which there is no difficults in triating substituted service as due service. If defend int deletherately exists service and substituted service is properly asked for, granted and effected, there is due service.

(1932) VI R 1932 Mad 472 (473) 138 Ind Cas 146, Rajajopolachars v

Subramanyam (1931) V R 1931 All 727 (729) 54 All 154 136 Ind Cas 609 (FB), Pam Bharow V Ganja Sinjh

(1913) 19 Ind Cas 425 (426) 9 Nag L R 35, Habibullah v Karanju.

Article 164 Notes 5—7 In Venlatachalam v. Subbayya,7 it was however held by Mr. Justice Srinivasa Iyengar that a substituted service can never be "due service" within the meaning of this Article and that consequently time will run only from the date when the applicant got knowledge of the decree. This view has not been followed in other cases" of the Madras High Court and cannot be considered to be correct. In Gyanammal v. Abdul Hussain, Mr. Justice Reilly was of the opinion that even though substituted service is technically and formally effected in the manner prescribed by the Code, it is not due service unless it has been really effective, i. e., has achieved the object of service by bringing the claim against him to the knowledge of the defendant, or respondent. It is submitted that this view also does not appear to be correct. Where a mode of service prescribed by the Code is followed in the manner prescribed in all details, it

- 6. "Summons," meaning of. The word "summons" in this Acticle refers to summons to be served on the defendant for the first hearing of the suit. It does not include notices that might be served on the defendant during subsequent stages of the suit. Therefore, where the summons for the first hearing has been duly served on the defendant and the fact that the caso was transferred to snother Court and notice of such transfer was not duly served on the defendant, and the fact that the suit was adjourned to another date and notice of such date was not given to the defendant, or the fact that the suit was remanded by the Appellato Court for re-hearing and no notice of the date of hearing on remand was duly served on the defendant, will not give a fresh starting point of limitation under this Article.
- 7. Service of summons referred to is service on the original defendant. The party with reference to whom service of summons is spoken of in this Article is the original defendant. Where a legal

(1925) A I R 1925 Lah 639 (639) . 92 Ind Cas 272, Dillu Ram v. Nawab. (1931) A I R 1931 Lah 116 (116] : 131 Ind Cas 314, Hansray v. Narain Sinnh.

(1931) A I R 1931 Outh 369 (369): 132 Ind Cas 778, Thalur Prasad v. Barats Lal. (See also (1935) A I R 1935 Pesh 112 (113): 157 Ind Cas 878, Dharam

Chaud v. Dharam Chand
(192) A I R 1925 Rang 187 (189): 2 Rang 655 . 85 Ind Cas 324, Ma
Naw Y. Somaumdaran Chelty]

(1928) A I R 1923 Mad 655 (655) 103 Ind Cas 899.

8. See the Madras cases cited in Poot-Note 6 above.

9. (1931) A I R 1931 Mad 913 (916) . 55 Mad 223 : 134 Ind C is 1202.

Note 6

 (1932) A I R 1932 Lah 539 (510) . 139 Ind Cas 351, Sham Sundar Khushi Ram v. Dev Ditta Mat.
 (1920) A I R 1920 Lah 261 (262) . 57 Ind Cas 15, Mt. Lat Devs v. Amar

Nath (1924) A I R 1924 Lah 666 [666] : 76 Ind Cas 14, Surpit Singh v. C. J.

Torrie.
3 (1935) A I R 1935 Pesh 7 [8] . 151 Ind Cas 429, Tara Chand v. Ram Chand.

Article 164 Notes 7-8

representative of a deceased defendant against whom an exparte decree had been passed, applied to set aside such decree and it was found that the original defendant had been drily served, it was held that time ran from the date of the decree and not from the date when the learl representative got knowledge of the decree.\(^1\)

- S. "Knowledge of the decree."—The term "knowledge" means a certain and clear perception of a fact. The cyrression "knowledge of the decree" in the Article means knowledge not of a decree, but of the particular decree which is sought to be set aside 1 It does not, however, mean knowledge of the contents of the docree or the general effect thereof. 14
- In Bapu Rao Sakharam v. Sadhu Bhivba, Macleod, C. J., observed as follows:

"We think the words of the Article mean something more than mere knowledge that a decree had been passed in some sut in some Court against the applicant. We think it means that the applicant must have knowledge not merely that a decree has been passed by some Court against him, but that a particular decree has been passed against him in a particular Court in favour of a particular person for a particular sum."

The same view has been held in the undermonitoned cases also ³ A vague suspicion that the defendant must have heard of some decree is not enough to dismiss his petition on the ground that it is barred by limitation. ⁴ Knowledge of the suit is not knowledge of the decree. ⁴⁴ A party praying to set aside an ex paite decree cannot be held to have had knowledge of a decree that had been prissed against him from the mere fact that he had been told some information in a suit of which ho is given no details. The fact that such information might have put the defendant on inquiry does not impose on him a

Note 7

1 (1915) A I R 1915 Mad 1204 (1205) - 39 Mad 442 21 Ind Cas 508, Venhatasubbter v. Krishnamurths

Note 8

- (1909) 4 Ind Cas 586 (587, 588) (Bom), Pundlick Rouge Vasantrao,
 - (1911) 9 Ind Cas 189 (193) 38 Cal 393, Kumud Nath v Jalindra Nath
- (1910) 6 Ind Cas 901 (903) (Bom), Abdool Hoossein v. Esmail;
 (1923) A 1 R 1923 Bom 193 (193)
 47 Bom 485
 72 Ind Cas 130.
- 3 (1926) 92 Ind Cas 295 (296) (Nag), Islam v Gangia
 - (1926) A I R 1936 Mad 31 (33) 90 Ind Cus 1042, Mahomed Sahib v Alagappa Chelliar
 - (1937) A 1 R 1917 1 at 17 (19, 20) 166 Ind Cas 635, Kedar Nath Singh v Aco: Wall
 - (1931) A I R 1931 Nag 119 (120) 27 Nag L R 53 134 Ind Cas 279, Chintaman v Pannalal
 - 4 (1926) A I R 1926 Mad 31 (93) 20 Ind Cas 1012, Mckan ed Salab A. Alagapra Chelliar
 - (1937) A I R 1937 Pat 17 (19 20) 164 Ind Cas 635 Ledas North Surgh v. Kests Mull.
 - 4a (1930) A. I. R. 1930. Lab. 297. (1985). 129. Ind. Cas. 689. Mar. Alicel. v. Pur. Bulledg.

Article 164 Notes 8—9 particular obligation to inquire further. The duty is rather on the plaintiff of giving full information as to the litigation and knowledge of the decree. Where the petitioner's brothers had knowledge of the ex parte decree made against the petitioner, the inference cannot reasonably be drawn that the petitioner had knowledge of it, when it is proved that he lived away from his brothers and there is no evidence that they communicated the fact of the decree to him.

The question when the applicant has knowledge of the decree is one of fact. Before holding that the application for setting aside the decree is barred by limitation, the Court is bound to make an inquiry as to when the defendant got knowledge of the decree.

The knowledge of the decree referred to in the Article is that of the applicant. If the legal representative of a deceased defendant, against whom an exparte decree has been passed, wishes to file an application to set it aside, on the ground that the summons was not duly served on the defendant, he should do so within 30 days of bis (i. o. the applicant's) knowledge of the decree. But if the defendant himself has made such an application and on his death the legal representative continues the application, the date of knowledge of the legal representative is immaterial and it must be shown that the application by the defendant was made within 30 days of defendant's knowledge.

9. Extension of time. — It is a general principle that the Court cannot under its inherent power extend the period of limitation prescribed by the Act.¹ It follows that the Court cannot override

- (1933) A I R 1933 Pat 279 (289): 12 Pat 745; 145 Ind Cas 314, Napaharari Prasad Singh v. Brahmanand Lat. (Under Artlele 164 an application to set aside an exparte decree must be filed within thirty days from the date of the applicant's knowledge of the decree and not within thirty days of his knowledge of the suit.)
- 5 (1927) A I R 1927 Mad 981 (381, 382): 99 Ind Cas 621, Palamappa Chelliar v. Vedachalla Mudahar.
- (1911) 9 Ind Cas 189 (193) * 38 Cal 391, Kumud Nath v. Jalindra Nath.
 (1889) 12 Mad 512 (516) * 5 Sar 455 * 13 Ind Jur 409 (P C), Krishnan v. Spiders
 - (1937) A 1 R 1937 Pat 17 (19, 20) : 166 Ind Cas 635, Kedar Nath v. Kesri Mult
- (1934) A. I. R. 1934. All 1011 (1013).
 151. Ind. Cas. 579, Afoddan. Pershad. v. Sari. Ram.
 [See also (1929). A. I. R. 1929. Lab. 235 (236).
 116. Ind. Cas. 520, Charges

See also (1929) A I R 1929 Lah 235 (236): 116 Ind Cas 520, Charan Das v. Puran Lal Gobind Pershad. (It is necessary for the

 (1925) A I R 1925 Oudh 870 (371)
 85 Ind Cas 529: 27 Oudh Cis 299, Mt. Deoki v. Jugal Kishore

 See (1927) A I R 1927 Mid 507 (508): 102 Ind Cas 213, Doraiswamu Iyer V. Balasundaram Iyer.

Note 9

 See Note 3 to Section 3, ante (1921) A 1 R 1921 Lab 656 (656): 76 1nd Cas 14, Surjit Sinjh v. C. J. Torne.

Article 164 Note 9

under its inherent powers the period prescribed by this Article on any equitable grounds.2

Section 5 of the Act does not expressly refer to an application under this Article and therefore, unless it has been made applicable to such applications by or under any other enactment, it cannot be resorted to for the purpose of excusing the delay in filing the application ³ In the Provinces of Bombay and Madras and the Central Provinces, Sec 5 has, however, been made applicable to applications under Order 9 Rule 13 of the Civil Procedure Code, and in those Provinces the Court can, for sufficient cause, excuse the delay in filing the application.

[See also (1920) A I R 1920 Lah 261 (261) 57 Ind Cas 15, Mt Lal Deuv. Amar Nath. (Application to set aside an exparte decree cannot be altered to one for review, by merely changing the description, to avoid limitation).

2. (1935) A I R 1935 Pesh 146 (147), Ajab Khan v Alaf Gul

(1910) 6 Ind Cas 901 (902) (Bom), Abdool Hussain Enifally v. Esmaily, Abdool Hoosein

(1928) A I R 1928 Rang 273 (275) II3 Ind Cas 811 6 Rang 494, U E Naung v P A R P Chettiar Ferm

(1934) A I R 1934 Nag 43 (14) 144 Ind Cas 394, Pundalik Vithoba v Ganpat

(1920) A I R 1920 Lah 201 (262) 57 Ind Cas 15, Mt Lal Dets v Amar Nath

(1922) A I R 1922 Pat 479 (180) 65 Ind Cas 341 . 1 Pat 277, Ajodhya .Wahton v. Phul Ruer.

(1926) A I R 1926 Lah 135 (195) · 89 Ind Cas 427, Firm Kundan Lai Mukandi Lai v. Kanshi Ram (1922) A I R 1922 Lah 266 (266) · 66 Ind Cas 270, Khairati v Umar Din

(1927) A I R 1927 Lah 342 (343) 100 I C 993, Pal Singh v Harnam Singh (1936) A I R 1936 Rang 305 (305) 164 Ind Cas 236, Jagadamma Pandit v Natesh Pandey.

 (1916) A I R 1916 Ca1 651 (652)
 Ind Cas 476, Tara Sanhar Ghose v. Nasaruda
 (1925) A I R 1925 Oudh 446 (446)
 Ind Cas 482, Mt Sulaba v Mata Div.

[1925] A I R 1925 Oudh 446 [140] Se Ind Cas 482, Mt Stidde v Maia Din.
 [1925] A I R 1925 Rang 187 [188] Se Ind Cas 482, Mt Stidde v Maia Din.
 [1926] A I R 1925 Oudh 446 [140]
 [1926] A I R 1925 Oudh 44

(1933) A I R 1933 Rang 110 (111) . 144 Ind Cas 980, Ramanathan Chettuar . Baldeo Singh

(1927) A I R 1927 Lah 342 (343) 100 Ind Cas 936, Pat Singh v Harnam Singh

(1920) A I R 1920 Lah 261 (262) 67 Ind Cas 15, Mt Lat Dett v Amar Nath (1922) A I R 1922 Lah 266 (266) 66 Ind Cas 270, Khaurati v Umar Don

(1922) A I R 1972 Lah 266 (266) 66 Ind Cas 210, Khairat v Umar Din (1910) 6 Ind Cas 901 (902) (Som), Abdod Hossin Engilly v Esmaily, Abdod Hussain (Section 5 has now been made applicable to such

4. (1925) AIR 1925 Mad 14 (17) 47 Mad 824 80 Ind Cas 877 (F B), Krishnamachaniar v. Sri Rongammal.

. . .

(1917) \ I R 1917 M id 957 (957) 32 Ind Cas 975 Sennimala: Coundan v. Palani Goundan.

(1922) A I R 1922 Mad 186 (187) 45 Mad C28 66 Ind Cas 104, Sudalasmuthu Kudumban v. Indi Beddiar

Article 164 Notes 9—13

Section 6 of the Act is limited in its applicability to suits and applications for execution and, consequently, cannot be taken advantage of for making an application governed by this Article.⁵

- 10. Exclusion of time under Section 14. In computing the period of limitation prescribed by this Article, the time during which the applicant has been prosecuting another civil proceeding in a wrong Court may be excluded under the provisions of Section 14 aute. If the conditions of that Section are satisfied.
- 11. Section 18 and this Article. Section 18 can be availed of by an applicant to set aside an ex parte decree, where he has been kept by fraud from the knowledge of his right to apply. See Notes to Section 18 ante. But the fraud must be such as to have kept him from knowledge of his right to apply and not such as has prevented him from exercising his right. Whore the petitioner alleged that he went to the decree holder and asked him about the decree and the latter said that he would come and settle things with him, it was held that the fraud alleged was not of the nature contemplated by Section 18 and that it did not affect limitation. The fact that an ex parts decreo has been obtained by fraud is not a ground for postponing the period of limitation under Section 18.2 Where the holder of a preliminary decree represented to the judgment-debtor that he should not and need not appear in the final decree proceed. ings on the assurance that such proceedings would be dropped, but nevertheless, continued the proceedings and obtained a final decree, it was held that fraud such as is contemplated by Section 18 was practised on the judgment-debter and that Section 18 could be availed of by him in an application to set aside the ex parte decree.3
- 12. Section 22 and this Article. See Note 3 to Section 22, ante.
- 13. Parties to application. There is no provision in the Civil Procedure Code requiring that persons in whose favour an exparte decree has been passed should he named in the application to set aside such decree II the application is made in time, the fact that
- (1910) 8 Ind Cas 543 (544): 35 Mad 678, Chidambaram Chetty v. Karuppan Chetty
 - (1917) A I R 1917 Lah 144 (146); S7 Ind Cas 292; 1916 Pun Re No. 101, Manchar Lal v. Mt. Sadiqa Begam.

Note 10

- (1932) A I R 1932 All 340 (342) 51 All 423 : 140 Ind Cas 178, Raghunandan Chaube v. Dhuwal Tewars. (A I R 1923 All 319 held not correctly decided)
 (1910) 6 Ind Cas 154 (156) (Cal), Bassesuddin Mondal v. Sonaullah Mondal
 - (1910) 6 Ind Cas 154 (156) (Cal), Basuruddin Mondal v. Sonaullah Mondul. (1920) A I R 1920 Bom 351 (352) : 57 Ind Cas 551, Ibrahim Harun v. Jusaf Hussain.

Note 11

- (1933) A I R 1933 Rung 110 (111). 144 Ind Cas 9%, Ramanathan Chellyar v. Baldeo Singh.
 (1920) A I R 1920 Iah 261 (261): 57 Ind Cas 15, Mt. Lai Deri v. Amar
- Nath. 3. (1926) A I R 1926 Neg 355 (389); 94 Ind Cas 56, M. B. Kinkhede v.

Mohanya.

the person in whose favour the decree was passed was not named in it at the time, but later, does not affect limitation.1

- 14. Onus of proof, When an application for setting aside an ex parte decree is made more than 30 days from the date of the decree and the applicant alleges that he was not duly served, tho onus is on him to show that he did not have knowledge of the decree more than 30 days before the application was made. It lies all the more heavily upon him when it is found that he was perfectly well awaro of the progress of the sunt.2 The onus cannot be shifted by the bare denial of knowledge made by the defendant.3
- 15. Subsequent application. Where an application to set aside an ex parte decree is made in time, but owing to the impossibility of serving the opposite side with notice the Court consigned the application to the record room, and subsequently the videment. debtor renewed his application to set aside the decree, but beyond time, it was held by the Lahore High Court that the original application must be deemed to be pending, that the subsequent application must be considered as merely one in continuance of the suspended original application and that, therefore, no question of limitation arose 1 In the undermentioned case,2 where an application to set aside an ex parte decree was dismissed for default and the applicant made a further application to restore the prior application to file, it was held by the Allahabad High Court that the second application might be treated as an original application to set asido

Note 13

1, (1935) A I R 1985 Cal 506 (507) 62 Cal 1057 157 Ind Cas 876, Dulal . Chandra v Atul Krishna

Note 14

- 1 (1936) A I R 1936 Rung 305 (305) 164 Ind Cas 286, Jagadamma Pandit v. Naresh Pandey
 - (1929) A I R 1929 Lah 285 (236) 116 Ind Cas 620, Charan Das v. Firm Puran Lal Gobind Prasad
 - (1930) A I R 1930 Lah 192 (192) . 124 Ind Cas 673, Tota v Badrs Pershad
 - (1928) 109 Ind Cas 82 (82) (Lab), Karam Singh v. Barkat Ram (1929) 120 Ind Cas 591 (595) (Lah), Mathra Das & Sons v Kanshi Ram
- (1932) 139 Ind Cas 131 (131) (Lab), Tappar Chand Laksma Chand v Habibul Rahiman
- (1925) A I R 1925 Lah 639 (639) 92 Ind Cas 272, Dittu Ram v Nawab (1918) A I R 1918 Lah 268 (268) 46 Ind Cas 777, Suphru Mal Haracharan
- Das v Sham Lal Gokal Chand
- (1928) 107 Ind Cas 284 (294) (Lah), Mt Rajo v. Alt
- (But see (1924) A I R 1924 Lah 233 (238) 73 Ind Cas 84, Nahala v Lacan Singh]
- 2 (1926) \ 1 R 1926 Lah 379 (350) 95 Ind Cas 124 7 Lah 161, Pire; Shah v Oarrb Shah
- 3 (1938) A I R 1938 Cal 535 (537), Bengal Coal Co Ltd v Baul Chandra Mulherji

Note 15

- 1 (1920) A I R 1920 Lah C9 (70) . 55 Ind Cas 524, Barkat Ullah v Facal s-Manla.
- 2 (1924) A I R 1924 All 203 (204) TS Ind Cas 858 46 All 819, Pitambara Lal v Dolce Smil

Article 164 Nntes 13 - 15

Article 164 Notes 9-13 Section 6 of the Act is limited in its applicability to suits and applications for execution and, consequently, cannot be taken advantage of for making an application governed by this Article.⁵

- 10. Exclusion of time under Section 14. In computing the period of limitation prescribed by this Article, the time during which the applicant has been prosecuting another civil proceeding in a wrong Court may be excluded under the provisions of Section 14 aute. If the conditions of that Section are satisfied.¹
- 11. Section 18 and this Article. Section 18 can be availed of by an applicant to set aside an ex parte decree, where he has been kept hy fraud from the knowledge of his right to apply. See Notes to Section 18 ante. But the fraud must be such as to have kept him from knowledge of his right to apply and not such as has prevented him from exercising his right. Where the petitioner alleged that he went to the decree-holder and asked him about the decree and the latter said that he would come and settle things with him, it was held that the fraud alleged was not of the nature contemplated by Section 18 and that it did not affect limitation. The fact that an ex parte decree has been obtained by fraud is not a ground for postponing the period of limitation under Section 18.2 Where the holder of a preliminary decree represented to the judgment-debter that he should not and need not appear in the final decree proceedings on the assurance that such proceedings would be dropped, but nevertheless, continued the proceedings and obtained a final decree, it was held that frand such as is contemplated by Section 18 was practised on the judgment-dehter and that Section 18 could be availed of hy him in an application to set aside the ex parte decree.3
- 12. Section 22 and this Article. See Note 3 to Section 22,
- 13. Parties to application. There is no provision in the Civil Procedure Codo requiring that persons in whose favour an ex part decree has been passed should be named in the application to ste aside such decree. If the application is made in time, the fact that

5. (1910) 8 Ind Cas 543 (544]: 35 Mad 678, Chidambaram Chelly v. Karuppan

(1917) A I R 1917 Lab 144 (146]: 37 Ind Cas 292: 1916 Pun Re No. 101, Manohar Lal v. Mt. Sadvqa Begam.

Note 10 1. (1932) A I R 1932 All 340 (312]: 54 All 423 · 140 Ind Crs 178, Raghunandan Chaubs v. Bhukal Tewari (A I R 1923 All 319 held not cor-

(1910) 6 Ind Cas 154 (156) (Cal). Basuruddin Mondal v. Sonauliah Mondul. (1920) A I K 1920 Botn 351 (352) . 57 Ind Cas 551, Ibrahim Harun v. Jusaf Hussain.

Note 11

(1933) A I R 1933 Rang 110 (111): 141 Ind Cas 950, Ramanathan Chellyar v. Baldes Singh.
 (1920) A I R 1920 Lah 261 (261): 57 Ind Cas 15, Mt. Lal Devi v. Amar

Nath 3. (1926) A I R 1926 Nag 388 (389]: 91 Ind Cas 56, M. B. Kenkhede v.

MIR 1929 Sag 359 (359]: 91 Ind Cas 56, M. B. Ki Mohanya.

Article 165 Note 3

3, "By a person dispossessed." - As seen in the foregoing Note, this Article applies to applications under Order 21 Rule 100. Civil Procedure Code. That Rule provides for applications by a person other than the sudament-debtor. The use of the words "by a person" in this Article, which is very wide, has however led to a conflict of udicial decisions as to whether this Article applies also to applica. tions by a sudament-debtor complaining of delivery of property in excess of what has been decreed or sold. In the earlier cases decided by the High Courts of Allahabad, Madras and the Chief Court of Oudh,3 it was held that this Article is wide enough to include applications by the judgment-debtor who has been dispossessed of immovable property and who disputes the right of the decree-bolder or purchaser to be put into possession. But in later cases the High Court of Allababad.4 a Full Bench of the High Court of Madras and the Chief Court of Oudh have taken a contrary view and held that this Article does not apply to applications by judgment-debtors, but applies only to applications by a person other than the judgmentdebtor as under Order 21 Rule 100 of the Civil Procedure Code. The reasoning of the Full Bench of the High Court of Madras for taking the latter view is that the provision in Section 230 of the Code of Civil Procedure, 1859, was re-enacted as Article 158 in Act 9 of 1871 and subsequently as Article 165 of the Limitation Acts of 1877 and 1908, and that inasmuch as Section 230 applied only to abstructions and dispossession of a person other than the defendant, the Legisla. ture in re-enacting that Section in Article 158 of the Act of 1871 must have intended the Article to apply only to eases covered by Section 230, viz., applications by third parties. The High Courts of Bombay, Calcutta, Lahoro and the Judicial Commissioner's Court of

Note 3

1 (1900) 25 All 343 (316) 1903 All W N 59, Har Din Singh v. Lachman Singh

(1891) I Mad L Jour 42 (43), Vythilinga Muppanar v Seethalakhun Ammal 3. (1914) A I R 1914 Owih 270 (271) 17 Oudh Cas 94 21 Ind Cas 137, Raja Ran v, Itag Kunnar

(1902) 6 Oudh Cas 44 (46), Jagan Nath v Datta

4. (1916) A I R 1916 All 101 (10th) 38 All 339 34 Ind Cas 231, Abdul Karim 7 Mt Islamunussa Bibi

5. (1919) A I R 1919 M id 260 (271) 42 Mad 753 53 Ind Cas 437 (F B), Thattanlarifa v Kambi Hassan

6 (1929) A I R 1929 Oudh 76 (79) 115 Ind Cas 411 4 Luck 209, Mt. Jilai v Abdul Bahman

7 (1922) A I R 1922 Bom 271 (272, 273) 68 Ind Cas 349 46 Bom 1031, Basul Malik Pinjar v. 4mina Hansf

(1931) A I R 1931 Bom 446 (447, 448) 133 4nd Cas 858, Gangadkar Martani v Jagundandas Varynamdas 8 (1923) A IR 1923 C 12-7 (2-8) 6 7 Ind Cus 663, Bahur Das Pal v. Gurish

(1923) AT R 1923 CH 287 (289) OF Ind CB 663, Faith Fig. 24 1. Office Chandra Fail [See however (1981) 7 Cal 91 (98) 9 Cal L R 53, Mahowel Hoxen v Kohl Singh]

9. (1919) \ [R 1919 Lalt 430 (432), Sharfu v. Mir Klav.

Article 165 Notes 3-5 Upper Burma¹⁰ have also preferred to follow the latter view, so that the present accepted view of practically all the Courts is that this Article does not apply to applications by the judgment-dohtors. According to the latter decisions, applications by the judgment-dobtors are governed by Article 181 of the Act.

- 4. "Dispossessed," meaning of. In order to sustain an application under Order 21 Rule 100 of the Code of Civil Proceduro, the applicant thereunder must have been actually dispossessed. Mero symbolical delivery of possession does not amount to dispossession as to entitle a person to apply under that Rule. Where, however, actual possession is delivered to the purchaser in court-sale, in spite of objection by a third party and in the presence of the latter's agent, be is dispossessed and will be estopped from disputing the possession of the purchaser more than twelve years after each dispossession."
- 5. Starting point of limitation. Under this Article limitation begins to run from the date of dispossession. Where possession is delivered by a Court Amin, the date of delivery of possession by the Amin and not the date of his report as to such delivery, is the starting point.²

In computing the thirty days' period of limitation, the date of dispossession must be excluded. Thus, where the dispossession took place on 14th December 1875, and the application was filed on 14th January 1876, 13th January 1876 being a holiday, it was held that the application was not barred.³

Where an application under Order 21 Rulo 100 of the Codo of Club Procedure has been filed within thirty days from the date of dispossession impleading the purchaser who dispossessed the applicant as a party, such application cannot be considered to be defective and barred simply because the sub-purchaser has not been originally added as a party.

Note 4

- 1. (1903) 80 Cal 710 (712), Ibrahim Mullick v. Ramjadu Rakshit.
- 2. (1903) 27 Mad 262 (266, 267), Venkatakristna Bow v. Venkappa.

Note 5

- 1. (1902) 6 Oudh Cas 44 (47), Jagannath v. Datta
- 2. (1864) 1864 Suth W R Mis 18 (18), Kasheenath Doss v. Dhowanes Dossee.
- 3. (1878) 2 Bom 673 (675), V. K. Gurjar v. V. D. Barre.
- 4. (1931) A I R 1931 Cal 395 (357): 59 Cal 55: 132 Ind Cas 631, Indubhushan Das y. Harscharan Mandal.

 ⁽¹⁹¹⁸⁾ A I R 1918 Upp Bur S (3): 46 Ind Cas 323: 3 Upp Bur Rul 79-Maung Than, Ma Pyu

166. Under the same | Thirty days. | The date of Article 166 Code to set aside a sale in the sale. execution of a decree (including any such application by a judgment-debtor).

Sunopsis

- 1. Legislative changes.
- 2. Scone of Article.
- 3. "Under the same Code."
- 4. "To set aside."
- 4a. Void sale Application in respect of.
- 5. "Decree."
- Adjustment of decree after sale Application to record adjustment and set aside sale - Limitation.
- 7. Application under Order 21 Rule 89. Civil Procedure Code.
- 8. Application on ground of judgment-debtor having no saleable interest in the property - Limitation.
- 9. Sale in insolvency proceedings-Applicability of Article.
- 10. Applicability of Article to application to set aside sale under Section 173 of the Bengal Tenancy Act.
- 11. Parties to application to set aside sale Effect of joining them after limitation.
- 12. Notice to persons affected by application to set aside sale - Limitation.
- 13. Application by notice of motion, when deemed as made.
- 14. Suit to avoid sale treated as proceeding under Section 47. Civil Procedure Code - Limitation.
- 15. Setting aside of sale under inherent power Limitation. Act of 1877, Articles 186 and 172

	••		Thirty days.	The date of the sale.
Court.		•	!	
aside the sale	on the ground to e property purpor	execution-sale, to set that The person whose ried to Le sold had no	Sixty days	The data of the sale.
		Act of 1871		•
	d of irregularity	execution of a decree, in publishing or con.	Ditto	The data of the sale.
		Act of 1859	•	

No corresponding provision.

Artiole 166 Note 1

- Fresh ground for setting aside sale, if can be urged after limitation.
- Extension of time under this Article.
- Computation of limitation under the Article Effect of fraud.
- 19. Defence not barred.
- 20. Special or local law, period prescribed by.
- 21. Starting point of limitation.
- Order setting aside sale subsequently reversed Limitation for fresh application to set aside sale.

Other Topics

Acceptance of highest bid by Court—II necessary to complete sale ... See Note 21, Pts 3, 4

Article does not override special provisions of Civil Procedure Code See Note 2, Pt. 18

Completion of sale See Note 21, Pts. 2 to 7 and Fts (5)

Confirmation of sale is no bar to application within time ... See Note 2, Pt. 18

Take of sale and not that the confirmation see Architecture ... See Note 2, Pt. 19

Take of sale and not that the confirmation see Architecture ... See Note 2, Pt. 19

Take of sale and not that the confirmation see Architecture ... See Note 2, Pt. 19

Take of sale and not that the confirmation see Architecture ... See Note 2, Pt. 19

Date of sale and not that of confirmation a starting point ... See Note 21, Pt. I
Exclusion of time under Section 14 ... See Note 17, Pt. 9, 10
Mere deposit of amount within thirty days — Not sufficient to present of limitation ... See Note 7, Pt. 4

Right to apply to set aside sale arising subsequent to rale-Article does not apply.

See Note 2, Piz. 16, 17

See Note 17, Pt. 11

See Note 17, Pt. 11

Sections 5 and 6—Applicability ... See Note 17, Pts. 4 to 6
Sections 12, 13—Not applicable ... See Note 17, Pts. 7, 8
Voldable sales ... See Note 2, Pts 12, 14

Legislative changes.

Position under Act of 1859: The Act of 1859 (which only applied to suits and not to appeals or applications) did not contain any provisions corresponding to this Article. But, the Civil Procedure Code of 1859, Section 256, provided that at any time within thirty days from the date of the sale, an application might be made to the Court to set aside the sale on the ground of any material irregularity in publishing or conducting the sale. It was held with reference this provision that the Court had a dissection to receive an application under the Section even after the period of thirty days prescribed by it.*

Position under Act of 1871: A provision corresponding to this Article was for the first time enacted in the Act of 1871, as Article 159 But this Article only applied to an application to set aside a

Article 166 - Note 1

 (1866) 6 Suth W R Mis 122 (192), Ishan Chunder Duit v. Mothoranath Doss

[See (1870) 7 Bom H C R A C 74[77], Vir Singappa v. Sadashitappa. (Section 256 dld not apply where the sale was attacked on the ground of fraud]]

 (1872) 18 Suth W R 333 (334), Ray Coomar Singh v. Lalljee Sahoo. (1872) 18 Suth W R 12 (11, 12), Provisor v. Durin. (1872) 18 Suth W R 11n (12n), In re Umrito Lall Bose.

Article 166 Note 1

sale on the ground of uregularity in publishing or conducting the sale, and did not apply to applications based on other grounds

Changes made by Act of 1877: The Act of 1877 contained two provisions, vis. Articles 166 and 172 specifically relating to this subject

Article 166, when it was originally enacted, merely reproduced Article 159 of the Act of 1671 But, by Act 12 of 1879, the Article are sellarged so as to include an application to set aside a sale on the ground that the decree-holder had purchased the property without the permission of the Court. Thus, the Article, as amended, applied to two cases:

- applications based on the ground of irregularity in publishing or conducting the sale, and
- applications based on the ground that the decree-holder had purchased the property without the pormission of the Court 3

The Article did not apply to applications based on other grounds.⁴
For instance, it did not apply to applications based on the ground of
fraud in the execution proceedings. Such applications were held to
fall within the residuary Article 178 of the Act⁵ (now Article 181).

Article 172 of the Act of 1877 provided a period of sixty days for an application to set aside a sale on the ground that the judgmentdebtor had no saleable interest in the property sold.⁶

Changes made by Act of 1908:

 The words relating to the grounds on which the application was made were omitted so as to make the Article applicable to all applications to set aside an execution sale in espective of the ground on which it was based.

^{3. (1903) 13} Mai L Jour 231 (235), Maximuthin Udangan x Subbaraya Pillat,
[But see (1837) 11 Dom 588 (500), Chindianarian Natu x Vithabai
(The tree then in this case that the Article did not apply to
application to set acide sale on ground of decree holder having
purchased without primission of Court, in not correct []

^{4 (1900) 22} Ali 376 (377) 1900 VI W N 129, Lalman Das v Jagan Nath. (1897) 24 Cal 707 (709, 710) 1 Cal W N 534, Chand Monce Dasya v Santo Monce Dasya

^{(1898) 3} Cal W N 833 (336), Luchmipat v Mt Mandil Korr

^{(1911) 9} Ind Cas 584 (585) (Cal), Lakshmi Charan Sen v Sris Chandra Roy. (1910) 7 Ind Cas 48 (48) (Cal), Sadel Sardar v Kali Prasanna Saha

^{5. (1885) 9} Dom 468 (471), Salharam Gound & Damodar Alharam

^{(1899) 26} Ctl 924 (331) 3 Ctl W N 399, Bhubon Mohun Pal v Nunda Lal Deu

^{(1898) 2} Cal W N 691 (693), Nemas Chand Kanje v Deno Nath Kanje

^{(1907) 5} Crl L Jour S28 (332), Detendra Nath v. Prasanna Kumar. (1909) 2 Ind Cas S44 (-15) - S6 Cal C54, Purna Chandra Mandal v Anului Bisuas.

⁽¹⁹¹⁹⁾ A I R 1919 Pit 574 (576) 74 Ind Cas 202, Baide, Singh Megha

^{(1900) 5} Cil W N 265 (268), Sarat Kunars Peb v Nimai Chiran Dev 6, (1905) 2 Cil L Jont 506 (507), Hars Charm Live v Harn'as Lov

^{7 (1920)} A I R 1920 Pat 725 (725) 57 Ind Cas 404, Injihar Missir v Divina Khatica.

- The words "under the same Code" (meaning "under the Civil Procedure Code") were added in the heginning of the Article.
- 3. The special provision contained in Article 172 of the Act of 1877 relating to applications for setting aside the sale on the ground of the judgment debtor having no saleable interest in the property was repealed, so that such applications also came within the thirty days' rule under this Article, whereas under Article 172 of the Act of 1877 a period of 60 days was prescribed for such applications.

Amendment after 1908: The words "including any such application by a judgment-dehtor" were added at the end of the Article by Act 1 of 1997.

2. Scope of Article. — This Article prescribes the period of limitation for an application under the Civil Procedure Code to set saide a sale in execution of a decree. As seen in Note 1 above, the scope of the Article in the present Act has been widened so as to make it applicable to all applications under the Code to set aside a sale in execution, irrespective of the ground on which or the provision of the Code under which the application is made. But, notwithstanding this, it was held in some decisions that the Article

- (1924) A I R 1924 Rang 124 (125) 1 Rang 583: 77 Ind Cas 868, Ma Pwa v. Mahemed Tambi.
- (1915) A I R 1915 Cal 268 (271) 27 Ind Cas 294, Arjun Das v. Gunendra Nath Basu
- (1924) A I R 1924 Mad 817 (818) : 81 Ind Cas 844, Alliar Rowther v. Narayana Eudumban.

(1911) 11 Ind Cas 295 (298) (Cal), Kuhori Dass v. Muhund Lal Dutt. (Article in Act of 1903 applies to application made after coming into force of that Act though sale was prior to coming into force of the Act)

Note 2

1. (1924) A I R 1924 Mad 137 (138) : 47 Mad 525 : 77 Ind Cas 631, Parameta

- (1922) A I R 1922 Pat 507 (509): 2 Pat 65: 77 Ind Cas 957, Ramdhurs Chowdhurs v. Deonandhan Prasad Singh. (Do.)
- (1924) A J R 1924 Rang 124 (124, 125) : 1 Rang 533 : 77 Ind Cas 368, Ma Pwa v. Mahomed Tambi (Do.)
- (1920) A I R 1920 Pat 745 (715); 57 Ind Cas 261, Sakhi Rai v. Ram Autar Ras. (Do.)
- (1935) A I R 1935 All 889 (890, 891) : 156 Ind Cas 389, Gulzari Lal v. Sheo Charan Lal.
- (1932) A I R 1932 Cal 627 (629): 140 Ind Cas 732, J. C. Galstaun v. Syed Mohammad Hussain.
- (1920) A I R 1920 Cal 165 (166): 51 Ind Cas 431: 46 Cal 975, Sainsh Chandra v. Nishi Chandra Dutta. (Where the applicant to set

did not apply to an application under Section 47 of the Code to set aside a sale. In order to make it clear that the Article applies also to such applications, the words "including any such application by a judgment-debtor" were added at the end of the Article by Act 1 of 1997.³ It is now clear that whether the application is under any of the Rules in Order 21 like Rule 72 and Rules 89 to 91 or is one under Section 47, the Article applicable is thus Article ⁴

- (1938) A I R 1938 Nag 558 (559), Marots v. Kesanlal.
- (1937) A I R 1937 Mad 509 (561) 172 Ind Cas 247, Subramania Asari v. Ramaswami Pillai
- (1923) A I B 1923 Mad 43 (49) 69 Ind Cas 1001, Subramanyan Nambudri v V K V. Kammathi. (Court extending time for deposit by the auction-purchaser under O 21, R. 85, C. P. G. or accepting a

Subramania Moothan (A sale held without notice of sale proclamaand an application to set

>) · 30 Nag L R 135, Sobha not hable to attachment

and sale - Application by judgment debtor to set aside sale as within

(1921) A I R 1921 Pat 145 (149) . 61 Ind Cas 823, Das Narayan Singh v.

(1924) A I R 1924 Mad 817 (818) 81 Ind Cus 844, Allian Rowther v. Navayana Kudumban (Do.)

(1919) A I R 1919 Lah 152 (154) * 51 Ind Cas 447, Bashs Ram v Hassan Muhamad (Do)

(1921) A I R 1921 Born 285 (287) 45 Born 174 88 Ind Cas 231, Bhaichand Kirparam v. Ranchhoddas Manchharam. (Sale beld in contravention of O 34, R 14 is voidable and not void)

(1916) A I R 1916 Rom 61 (63) 41 Bom 357: 39 Ind Cas 3, Ganesh Narayan v. Gopal Vishnu (Do)

(1931) ATR 1934 All S14 (S14) 151 Ind Cas 214, Narotam Das v. Bhagwan Das (Application under O 21, R 90-Acticle applies)

2. Sec (1917) A I R 1917 Low Rut 80 (81) 37 Ind Cas 627, Ramaswam, Chelly v Maung Tha

(1928) A I R 1928 Cal 865 (866) . 116 Ind Cas 631, Hafees Urir Ali v.

(1918) A I R 1918 Cal 171 (178) 46 Ind Cas 221, Ram Kunlar Tewar, v. Sthin Ram Panja

3. See Statement of Objects and Peawns, Gazette of India, dated 29th January 1927, Part V, Page 5 (Page xxxxx in Vol. 1) 4. (1907) A. I. R. 1907, Rang. 126 (122) 169 Ind Cas. 267 1997 R. L. R. 164,

Ma We Gyan v. Maung Than Dyu. (1931) \ I R 1931 All 145 (146) · 180 Ind Cas 703, Kashs Barn v Mt. Has-

mat Banco (1938) A I R 1938 Cal 113 (116, 117) I L R (1938) 1 Cal 280, Navode Kala Econ v Ean Harendra Nath

(1931) A I R 1931 Ctl 425 (426) 181 Ind Cas 501, Mt Kuti Paru Ett 1, Jitendia Nath Ect.

Article 166 Note 2

But, in order that this Article may apply, the application must be one to set aside a sale in execution. An This necessarily implies that the sale in respect of which the application is made is binding on the applicant till it is set aside. Where the sale is void, it need not be set aside and can be disregarded without any proceeding to set it aside. In fact, in such cases, there is nothing to be set aside and hence, there can be no application to set aside the sale. Honce, the Article can have no application to such cases. Such a sale can, however, be declared to be void and an application may be made to the executing Court to make such a declaration. But such an application will not be one to set aside the sale and therefore

[But see (1933) A IR 1933 Lah 570 (573): 145 Ind Cas 118, Hansarf v. Karam Chand. (The unqualified observation in this decision that Hmitation for lodging objections under S. 47, O. P. O., is governed by Article 181 and not by Article 166 is not correct.)]

4a (1927) A I R 1937 Cal 848 (819): 54 Cal 493: 103 Ind Cas 621, Satindra Original Sido Rules it complete on pro-Auction purchaset

solo under certain congustions — appreciation under once assess many that he, nuction purchaser, was not bound to complete sale and asking for refund of purchase-money — Application is not one to set and a sale and is

 (1930) A I R 1930 Pat 153 (154): 119 Ind Cas 891, Monuddin Meerza v. Mohamed Amin.

therefore not within this Article)

(1929) A I R 1929 Nag 305 (311): 116 Ind Cas 65, Sunderbay V Bapuna. (An application for review of the order confirming sale can, in such a case, be treated as an application under Sec. 47, C. P. C., and governed by Article 181.)

(1916) A I R 1916 Mad 93 (35): 29 Ind Cas 314: 38 Mad 1076, Payadanno v. Lakshmunarasamma.

(1904) 32 Cal 296 (312): 32 Ind App 23: 9 Cal W N 201: 2 All L Jour 71: 7 Bom LR 1: 1 Cal L Jour 584: 8 Sat 784 (P C), Khairajmal v. Daim.

G. (1936) A I R 1936 Pat 496 (497): 163 Ind Cas St, Firm Ramanand Ganyat Rai v. Rakhal Mandal.

(1937) A I R 1937 Rang 126 (128): 160 Ind Cas 967: 1937 R L R 164, Ma We Gyan v. Maung Than Byu.

(1938) A I R 1938 Cal 113 (116, 117): I L R (1938) 1 Cal 280, Nirode Kali Roy v. Ras Harendra Nath.

(1930) A I R 1930 Mad 12 (15): 123 Ind Cas 24, Chengalraya Reddy v. Kollapur: Redds

(1930) AIR 1930 Lah 17 (18) · 125 Ind Cas 53, Lahshmi Chand v. Phul Chand.

Chana.
(1924) A 1 R 1924 Mad 431 (437): 47 Mad 298: 50 Ind Cas 92 (F B),
Rajagopala Assar v Ramanujachariar.

(1924) A I R 1924 Cal 688 (689): 51 Cal 224; 82 Ind Cas 848, Jogeshwar

Mahata v. Jhapal Santal. (1921) A 1 R 1931 Cal 609 (611). 64 Ind Cas 476, Gurudas Biswas v. Bhowanipore Zamindary Co., Ltd.,

by Article 120)

[But see (1923) A I R 1922 Mad 417 (420): 70 Ind Cas 743, Gatapathy Mudaliar v. Krushnamachari. (Submitted not correct)-1 7. See (1921) 60 Ind Cas 529 (530) (Pat), Chambyam Chaudhury v. Basileb Jha. (Notice under S. 158 (b), Bengal Tenancy Act, not having ben issued, sale was void—Suit was held to be within time being governad

will not come within the purview of this Article. Even where an application in respect of a void sale purports to be one to set aside the sile, it is really one to obtain a declaration that the sale is void and, as such, is not governed by this Article. The undermentioned decisions will fall within this principle. Such applications, however, are not entirely exempt from the law of limitation ¹⁶ They will be governed by Article 181, 1n/10a, and must be brought within three years of the accrual of the right to apply ¹¹

Where, however, the sale is not void but is only voidable, it can only be avoided by means of an application to set it aside and such application must be made within the period of 30 days preserribed by this Article.¹² The object of providing such a short period of limitation for the application is to see that titles arising from judicial sales are settled as soon as possible ¹³

For instances of void and voidable sales, see the undermentioned cases. 14

- (1938) A I R 1938 Cal 113 (115, 116) I L R (1938) 1 Cal 280, Nurods Kals Rou v Ray Harendra Nath
- (1928) A I R 1928 Cal 60 (62) 105 Ind Cas 65 55 Cal 96, Monmatha Nath Chase S. Luchen, Deba
- Nath Chose v Luchun Deb (1931) A I R 1931 Lah 886 (889) 182 Ind Cas 493, Sundar Das v. Nikha 9 (1934) A IR 1934 All 314 (318) 151 Ind Cas 244, Narotam Das v Bhag-
- (1920) A I R 1920 Mad 402 (402, 403), 48 Mad 313, 56 Ind Gas 260, Sethagiri Rao v. Sreenijasa Rao (Property belonging to defendant exempted from decree — Sale of such property in execution — Sale is
- void àb inito] 10. (1932) À I R 1932 Cal 881 (381) : 137 Ind Cas 378, Surja Kania Das v. Jogendra Nath Dutt.
- [But see (1927) A I R 1927 Cal 781 [782] · 54 Cal 624 105 Ind Cas 193, Umamoges Dasys v Jatan Bewa (Sale being nullity, no question of limitation arises—View not correct]]
- (1926) A I R 1926 Pat 897 (398): 97 Ind Cas 799, Bihari Lal Matter v. Tanuk Lal Mander. See also caes in Foot-note 6, above.
- (1923) A I R 1923 Mad 48 (49). 69 Ind Cas 1601, Subramanyan Nambudri v. V. K. V. Kammath. (Deposit under O. 21, R. 85 paid beyond time and accepted by Court—Sale merely tregolar and not a nullity)
- 13. (1919) A I R 1919 Rom 130 (131): 43 Born 735. 53 Ind Cas 135, Raoja Baburao v. Bansilai Narayan.
- 14. (1900) 25 Bom 337 (347, 349), 27 Ind App 216 · 5 Cal W N 10 · 10 Mad I Jour 868 · 2 Bom L E 927 · 7 Sar 739 (P G), Malkarjun v. Narhari. (Erroneous decision of Court as to who are legal represen-
 - (1924) A I H 1924 Mad 137 (138): 47 Mad 525: 77 Ind Cas 631, Paramasia Thetar v. Pulukaruppa (Failure to bring on record legal representative of deceased pulgment-debtor—Sale irregular, not voil
 - (1922) A I R 1922 Mad 307 (809): 68 Ind Cas 667, Ragunathasams v. Gopauj

(1895)

Where an application to set aside a sale is within time under this Article, it is not barred merely because it is made after the confirmation of the sale.¹³

The Article is subject to the general principle that limitation cannot hegin to run before the accural of the cause of action and that the Articles in the Schedule can only apply to cases in which the cause of action has arisen at the time specified in the third column of the Article as the starting point of limitation. (See Notes to Section 9, ante.) Hence, where the right to apply to set aside an execution sale arises subsequent to the sale (which is the starting point of limitation under this Article), this Article will not apply.

- (1925) A I R 1925 Pat 384 (386, 387) . 86 Ind Cas 141, Barhamdeo Narayan v. Salıgram Sahay. (Do
- (1923) A I R 1923 Cal 802 (303): 75 Ind Cas 196, Saradindu v. Gosta Beharn. (Purchase by decree-holder without permission of Court is irregular, not void)
- (1916) A I R 1916 Rom 61 (63) : 41 Bom 357 : 30 Ind Cas 3, Ganesh Narayan v. Gopal Vishnu. (Do)
- (1918) A I R 1918 Cal 171 (173): 46 Ind Cas 221, Ram Kinkar Tewars v. Sihiti Ram Panja (Failure to serve notice under O 21 R 22 makes aale void.)
- (1924) A I R 1924 Mad 431 (436): 47 Mad 288: 80 Ind Cas 92 (F B), Rajagopala Ayyar v. Ramanujachariar. (Do)
- (1921) A I R 1921 Cal 609 (611): 64 Ind Cas 476, Gurudas Biswas v. Bhowanipore Zamindary Co., Ltd. (Do.)
- (1932) A I R 1932 Cal 381 (381): 187 Ind Cas 878, Surja Kanta Das v. Jogendra Nath Dutta (Do)
- (1930) A I R 1930 Pat 133 (154): 119 Ind Cas 691, Monuddin Meerza v. Mohammad Anin. (Do.)
- (1936) A I R 1936 Mad 205 (207): 59 Mad 461: 162 Ind Cas 150 (F B), Kanchamala: Pathar v. Shahaje Rajah Sahib. (Do)
- (1910) 5 Ind Cas 390 (301, 305) (Cal), Mrs. Letenia Ashton v. Madhabmoni Dass. (Omission to serve notice under Order 21, Rule 22 makes the sale voidable)
- (1924) A I R 1924 Rang 124 (125, 126); 1 Rang 533: 77 Ind Cas 868, Ma Puca v. Md. Tambi. (Absence of attachment in execution sale — Sale is merely irregular and not void.)
- 41916) A I R 1016 Mad 33 (35): 33 Mad 1076: 29 Ind Cas 314, Pasumaris Payadanna v. Gants Lakshmwarasamma (Minor legal representative of deceased judgment-debtor brought on record without being represented by guardian ad Litem—Sale is void and need not be set aside).
- (1934) A I R 1934 All 314 (315): 151 Ind Uas 244, Narotam Das v. Bhaguran Das (Sale by Uivil Court, of agricultural land contrary to notification by Government under 8 68, C. P. O. requiring that such sale must be by the Collector—Sale is void.)
- (1910) G Ind Cas 713 (715): 1910 Pan Re No. 40, Madho Lal v. Jawahir Singh. (Error in warrant of attachment is only a material irregularity—The sale is not void but voidable.)
- (1904) 31 Cal 385 (392), Kohl Singh v. Edat Singh. (Omission to comply with the provisions of S. 290, G. P. C. of 1882 (O. 21 R. 68) cannot nullify a sale)
- (1938) A I R 1939 Cal 734 (736), Sarifa Khaloon v. Assimannessa Bibi. (Absence of necessary notice under 0, 21 R. 16 is not a mere irregularity but vituates the whole execution proceedings and sale.)
 See also cases in Fool-Note (1) abore.
- (1915) A I R 1915 Low Bur 97 (97): 27 Ind Cas 656, Ismail v. Vinanadan Chelts.

Illustrations

- 1. A certain property is sold in execution of an exparts decree and purchased by the decree holder humself. Subsequently, the decree is set aside. In such cases, the judgment-dobton is entitled to apply to set aside the sale. But, the application will be governed not by this Article, but by Article 181, infia. The reason is that the right to apply in this case arises only on the setting aside of the cx parts decree, i. e., subsequent to the time specified in the Article as the starting point of limitation ¹⁶
- 2.A certain property was sold first to A in execution. Then, before the confirmation of the sile, the same property was sold to B. The sale to A was then confirmed. B thereafter applied to have the sale to himself set aside on the ground that the judgment-debtor had no saleable interest in the property. It was held that B's application was not governed by Article 161, the reason being that before the confirmation of the sale to A. B had no right to apply to set aside the sale at all." In other words, B's right to apply to set aside the sale at all."

The Article is a general provision and cannot override the special provisions of any particular Section or Rule of the Civil Procedure Code to the contrary. Thus, under Order 34 Rule 5 of the Code, a judgment-debtor can, after depositing the requisite amount, have the sale under a mortisgn decree set aside at any time before the confirmation of the sale, although the period of thirty days prescribed by this Article may have expired ¹²

- 3. "Under the same Code," These words refer to the Civil Procedure Code of 1908, which is mentioned in the pievious Aitcle, etz., Article 165. It has been held that an appeal under the Civil Procedure Code does not mean only an appeal the right to prefer which is conferred by the Code itself and that the expression would include an appeal the procedure with respect to which is governed by the Code. On the same reasoning, it is conceived, that an application under the Code will include an application the procedure in respect of which is governed by the Code, though the light to make the application is not conferred by the Code. See also Note 10, usifice.
 - 4. "To set aside." See Note 2 above
 - 4a. Void sale Application in respect of .- See Note 2 above.
 - 5. "Decree." See Note 9, infra
- 16 (1919) A I R 1919 Born 175 (175, 176) 43 Born 235 43 Ind Cas 130, Shitbai Babya Suami v Yeshu Chico Nayalin
- 17. (1910) 6 Ind Cas 804 (506) (Cal), Gopal Saran Narayan Singh v. Mahomed Sheikh Ashhan
- (1937) A I R 1937 Mad 560 (561) 172 Ind Cas 247, Subramanya Asarı v. Ramasu ams Pilla.

Note 3

1 (1886) 18 Cal 221 (224), Aga Mahomed Hamadan: Cohen.

(1920) A I R 1920 Mad 407 (408) 43 Vad 51 53 Ind Cas 405, Ramaswams Pillas v. Tahsildar of Madura

6. Adjustment of decree after sale - Application to record adjustment and set aside sale - Limitation. - Suppose, after the expiry of the period of limitation prescribed by this Article, an application is made to the Court alleging an adjustment of the decree subsequent to the sale, and praying that such adjustment should be recorded and certified and that the sale should be set aside Can the adjustment be recorded and the sale set aside? The answer to this question depends on whether the purchaser is a stranger or is the decree-holder himself. In the former case, the adjustment of the decree as hetween the decree-holder and the judgment-debtor cannot affect the rights of the auction purchaser and the sale cannot be set aside on the ground of such adjustment 1 The only way in which such a sale can be got rid of is by means of an application under Order 21 Rule 89 within the period of limitation prescribed by this Article.2 In Nanhelal v. Umrao Singh,3 the Privy Council chserved as follows:

"In the first place, Order 21 Rule 2, which provides for certification of an adjustment come to out of Court, clearly contemplates a stage in the execution proceedings when the matter lies only between the judgment-dehtor and the decree-holder and when no other interests have come into being. When once a sale bas been effected, a third party's interest intervenes and there is nothing in this Rule to suggest that it is to be disregarded. The only means by which the judgment-debtor can get rid of a sale which has been duly carried out, are those embodied in Rule 89, viz., by depositing in Court the amount for the recovery of which the property was sold, together with 6ve per cent. on the purchase-money which goes to the purchaser as statutory compensation, and this remedy can only be pursued within thirty days of the sale: See Article 166, Schedule 1, Limitation Act. 1908."

But, where the decree-holder himself is the purchaser, there being no third party's interests to be protected, the adjustment of the decree, though made after the evecution sale, can be recorded under Order 21 Rule 2 of the Code and the sale set aside. The expiry of

 ⁽¹⁹³¹⁾ A I R 1931 P C 33 (35): 130 1nd Cas 686: 58 Ind App 50: 27 Nag L R 95 (P C), Nanhelal v Umrao Singh

⁽¹⁹³⁴⁾ A 1 R 1934 Lah 503 (509) : 15 Lah 601 : 149 Ind Cas 445, Gulab Singh v Kishan Singh

 ⁽¹⁹³²⁾ A I R 1932 Lab 238 (239). 137 I C. 735, Satia Nand v. Jhangi Ram.
 (1911) 10 Ind Cas 146 (150, 151) (Cul), Bibi Sharfan v. Mahomed Habibidah

⁽¹⁹²⁸⁾ A I R 1928 Nag 136 (188, 143) : 109 Ind Cas 449, Kabiruddin v. Krishna Rao.

^{2. (1931)} A 1 R 1931 P C 33 (35) 180 Ind Cas 686: 58 Ind App 50: 27 Nag L R 95 (P C), Nanhelal v. Umrao Smah.

^{3. (1931)} A 1 R 1931 P C 33 (35, 36) : 130 Ind Cas 686 : 59 Ind App 50 : 27 Nag L R 95 (P C)

 ⁽¹⁹²⁸⁾ A I R 1928 Pat 40 (43) . 104 Ind Cas 753, Shivaram Sand v. Manu Lal Khenha.

the period of 30 days prescribed by this Article would be no bar to such a procedure. The reason is that where the parties to a proceeding enter into a lawful compromise, the Court is bound to recognise and give effect to such a compromise without going into the question as to whether the ielief granted to either party by such compromise is barred by limitation or not. (See Note 20 to Section 3, ante.)

Where one of the terms of the adjustment in such cases (i.e. eases in which the decree-holder limited is the jurchiser) is that the judgment-debtor must, as a condition of the adjustment being recorded and the sale being set aside, deposit in Court or pay to the decree-holder within a particular date, a certain amount, the Court cannot extend the time so fixed except with the coosent of the parties, ⁶

7. Application under Order 21 Rnle 89, Civil Procedure Code.
— This Article applies, inter alia, to an application to set aside a sale under O 21 R 89 of the Code, which must, therefore, be made within thirty days of the sale O. 21 R 99 requires that in such cases the deposit required by Rule 89 must be made within thirty days of the sale. Hence, it is necessary that both the application and the deposit required under Rule 89 must be made within 30 days of the sale. Where, however, the fact that the deposit is made after the expiry of 30 days from the sale is due to the fault of the Court or its officers and not of the applicant, the deposit must be held to be in time, on the principle contained in the maxim actus curies.

(1934) A I R 1934 Lah 508 (509) 15 Lah 801 149 Ind Cas 445, Gulab Singh v Kuhan Singh

(1935) A I R 1936 Oudh 55 (56) 11 Luck 418 157 Ind Cas 803, Nand Kumar v Maqsood Ali

6. (1917) A I R 1917 Pat 344 (344) 39 Ind Cas 664, Rameshuar Misser v. Sureshwar Misser. Note 7

1. (1931) A I R 1931 P C 33 (35, 36) 130 Ind Cas 686 58 Ind App 50 27 Nag

Channappa v.

2 (1931) A I R 1931 P C 33 (35, 36) 130 Ind Cas 686 58 Ind App 50 27 Nag L R 95 (P C), Nanhelal v Umrao Singh

(1917) A I R 1917 Mad 176 (176, 177) 33 Ind Cas 996, Vannisami Therary Periyasami Therar

(1929) A I R 1929 Nag 10 (11) 106 Ind Cas 568, Sadasheo v Narayan

(1937) A I R 1937 Pat 113 (115) 16 Pat 202 169 Ind Cas 493 (F B), Bhagnat Naram v Srimias

(1915) A I R 1915 Low Bur 97 (97) 27 Ind Cas 656, Ismail Ali v Vistanandau Chelly

(See (1913) 19 Ind Cas 475 (476) 37 Rom 387, Ganesh Bab Nath v. Vithal Vaman Mahalya (The deposit need not be sufficient to meet the claims of other decree holders who may be entitled to rateal le distribution); Article 166 Notes 6-7

neminem gravabit (an act of the Court shall prejudice no man).3

The mere deposit of the amount required under Rule 69 within thirty days of the sale will not prevent the bar of limitation and this Article. In order to prevent such bar, there must be an application to set aside the sale within thirty days from the sale, But, the application need not be in writing. For need it be signed. It may be oral. In the undermentioned case it was held that an application under Rule 89 was good though it did not contain an express prayer for the setting aside of the sale.

- 8. Application on ground of judgment-debtor having no saleable interest in the property — Limitation. — Where property, in which the judgment-debtor has no saleable interest at
- 3 (1922) A I R 1922 All 195 (196) : 67 Ind Cas 321, Durga Prasad v. Babu Lal. (1915) A I R 1915 All 414 (415) - 87 All 591 : 80 Ind Cas 186, Munnalal v. Badha Kishan.
- (1930) A I R 1930 Cal 249 (250): 126 Ind Cas 207, Rangina Sundars v. Hiralat Bistocs.
- (1910) 7 Ind Cas 52 (54) (Cal), Palturam Singh v. Kamini Mani Dassi. (1934) A I R 1934 Lab 875 (876): 155 Ind Cas 603, Buti Ram v. Sardar
- Singh. (1926) A I R 1926 Nag 331 (331) : 96 Ind Cas 876, Eachinal v. Amarsingh. (See also (1906) 9 Oudh Cas 214 (216), Radhe Lal v. Sheo Prasad.
 - (1903) 6 Oudh Cas 68 (71), Ram Nath v. Muridhar. (1934) A I R 1934 PA 338 (339) 13 Pat 64: 151 Ind Cas 818, Lachus Orda v. Ram Ran Bijay Prasad Suigh.]
- 4 (1911) 9 Ind Cas 33 (33) (All), Mathura Prashad v. Ram Lal. (1919) A I R 1919 Bom 130 (131): 43 Bom 735: 53 Ind Cas 135, Raoji Baburay . Bantial Narayan.
 - (1925) A I R 1925 Mad 639 (640) · 87 Ind Cas 437, Pachiayal v. Vallimuthu
 - Velan. (1922) A I R 1922 Mad 63 (83): 66 Ind Cas 44, Venhatasubba Rao v. Narayana Rao
 - (1917) Å I R 1917 Mad 662 (662): 33 Ind Cas 783, Venhata Narasimha v. Lakshmi Narasimha. (1917) A I R 1917 Mad 225 (226): 32 Ind Cas 45, Parat Veethi Secthi v.
 - (1917) A I R 1917 Mad 225 (226): 32 Ind Gas 45, Parat Veettil Section of Ambalath Veettil Kolathur Ahmad.
 - (1925) A I R 1925 Oudh 411 (412) : 87 Ind Cas 722, Ram Autar v. Sheo Piary Lal.
 - (But compare (1905) 7 Bom L. R. 263 (264, 265), Mathun v. Kondaji-(Decision turning on construction of S. 310 A of the C. P. Code of 1882)]
- 5 (1929) A I R 1929 An 593 (596): 119 Ind Cas 103: 51 All 910, Dip Chand v. Sheo Prasad.
- (1912) 13 1nd Cas 404 (405) (All], Sarvas Begam v. Haider Shah.
- (1925) A I R 1925 Mad 909 (910) : 86 Ind Cas 498, Murugappa Asari v. Shanmuga Mudahar.
- (1914) A I R 1914 Mad 209 (209): 22 Ind Cas 291, Mariappa Annam V. Harihara Iyer. 6. (1914) A I R 1914 Mad 209 (209): 22 Ind Cas 291, Mariappa Annam V.
- Harihara Iyer.
 7. (1928) A I R 1928 Nag 111 (111): 106 Ind Cas 833, Ronya v. Baliram.

the time of the sale, is sold, the sale is not a sullity so far as the purchaser is concerned. Hence, an application by the purchaser to sat aside a sale on the ground that the judgment-debtor had no saleable interest in the property is governed by this Article. Where the purchaser is the decree-holder humself and he does not apply to set aside the sale within the period prescribed by this Article, he cannot thereafter ignore the sale and apply again for execution of the decree as if the prior sale was a nullity ² But, where property belonging to A (who is a party to the suit) is sold in execution of the decree against B, and A applies under Section 47 of the Cwil Procedure Code for relief in respect of such sale, his application is not one set aside the sale but is one to declare it void and not binding on him and hence is not governed by this Article ³

9. Sale in insolvency proceedings—Applicability of Article.—There is a conflict of decisions as to the applicability of this Article to an application to set aside a sale in insolvency proceedings. In the undermentioned case, it was held by the Nagper Judicial Commissioner's Court that the provisions of Order 21 are applicable to such sales and that, therefore, an application to set aside the sale being one under the Crul Procedure Code, this Article applies to such an application But the Punjab Chief Court has taken a different view, its reason being that a sale in insolvency proceedings is not one "in execution of a decree" as contemplated by this Article." It is submitted that the latter view is correct.

Note 8

- (1995) A I R 1935 All 889 (891) 156 Ind Cas 389, Gulears Lal v Sheo Charan Lal.
 - (1922) A I R 1922 Bom 205 (206) 46 Bom 833 67 Ind Cas 360, Baluant Banganath v Bala Malu
 - (1928) A I R 1923 Cal 85 (88) 50 Cal 115 70 Ind Cas 600, Makar Ali v. Sarfaddin
 - (1935) A I R 1935 Mad 340 (34I) 159 Ind Cas 993, Keshatan v. Bipathumma (1927) A I R 1927 Mad 835 (838) 101 Ind Cas 614, Jagannadha Rao v.
 - Basawayya (1927) A I R 1927 Mad 301 (395) 50 Mad 639 100 Ind Cas 522, Muthu-
 - Kumarasamia Pillas v Muthusams Theran (1930) A I R 1930 Oudh 148 (152) 124 Ind Cas 611 5 Luck 552 (F B), Bhadur Singh v. Ram Phal
- 2 (1936) A I R 1936 Fat 97 (99, 100, 101) 160 Ind Cas 1049 15 Pat 303 (F B), Surendra Kumar v Srichand Mahata.
 - (1935) Å 1 R 1935 Mad 340 (341) . 159 Ind Cas 993, Kesharan v. Bipathumma (1927) Å 1 R 1927 Mad 835 (837) . 104 Ind Cas 614, Jagannadha Rao v.
 - Basatayya (1927) A 1 R 1927 Mad 394 (395) 50 Mad 639 100 Ind Cas 522, Muthu
- Kumarasamah Pillas v. Muthusami Thetan 3. (1938) A I R 1938 Cal III 8 (115, 116) . I L R (1938) I Cal 289, Nirode Kals Box Harendra Nath.

- 1 (1927) A I R 1927 Nag 262 (263) 102 Ind Cas 543, Balajs v. Gopal Mals (Following A I R 1921 Nag 25.)
- 2. (1914) A 1 R 1914 Lah 209 (209) : 23 Ind Cas 397, Afzal Als v. Amar Als.

Article 166 Notes 10—11

- 10. Applicability of Article to application to set aside sale under Section 173 of the Bengal Tenancy Act.—There is also a conflict of decisions as to the applicability of the Article to an application under Section 173 of the Bengal Tenancy Act to set aside a sale. According to the High Court of Calcutta, such an application is "cognizable under Section 47" of the Civil Procedure Code and is therefore governed by this Article. According to the High Court of Patna, on the other hand, such an application is not one under the Civil Procedure Code and is therefore not governed by this Article.
- 11. Parties to application to set aside sale Effect of joining them after limitation.—There is a conflict of decisions as to whether an application to set aside a sale in which the nuction-purchaser or the decree-holder is not joined as a party within the period of thirty days from the date of the sale but is so joined afterwards, is barred by limitation. According to one view, the decree-holder and the auction-purchaser are necessary parties to an application to set saide an execution sale and so, where either of them is not joined as party to the application till after the expiry of period of limitation, the application is partied. But, excording to the other view, the law only requires that notice should be given to the parties affected by an application to set aside a sale and it is not necessary that they must be joined as parties to the application. (See Order 21 Rule 92 Proviso) It is submitted that the latter

Note 10

- (1925) A I R 1925 Cal 351 (352) 51 Cal 1014: 82 Ind Cas 822, Haripada Haldar v. Baradaprovad. (Following 24 Cal 707.)
- (1927) AIR 1927 Pat 177 (177, 178): 6 Pat 366: 101 Ind Cas 564, Ananta Charan Padhan v. Munas Bahubalendra. (Case relating to application under S. 227 of the Orassa Tenancy Act which corresponds to S. 173 of Bengal Tenancy Act. Dissanting from AIR 1925 Cal 351
 - cited above) (1916) A I R 1916 Pat 30 (30) : 38 Ind Cas 209, Chandramma Ros v. Maharaja of Dumraon.

- 1. (1891) 1891 All W N 121 (121), Karamat Khan v. Mir Ali Ahmed.
 - (1893) 15 All 407 (409) : 1893 All W N 173, Ale Gauhar Khan v. Bansidhar. (1919) A I R 1919 Cal 510 (510) : 50 Ind Cas 5, Ajuddin Ahmed v. Khoda Bux.
 - (1928) A I R 1928 Cal 189 (190): 107 Ind Cas 783, Satish Chandra v. Rakhal Chandra.
 - (1919) 37 Mad L Jour 25 (26) (N R C).
- (1930) A I R 1930 Pat 318 (318) : 9 Pat 310 : 125 Ind Cas 570, Ramerhwar Singh v. Mongal Pranad
 - (1921) A I R 1921 Pat 498 (498) · 62 Ind Cas 61, Mt. Sumitra Kuer v. Damp. Lal.
- (1929) A 1 R 1929 AH 593 (595) : 119 Ind Cas 103 : 51 All 910, Dipchard v. Shee Prasad.
- (1935) A 1 R 1935 Cal 502 (502, 503) : 62 Cal 286 : 157 Ind Cas 637, Radha Kisson Mahari v. Tansuk Mahari.
- (1923) A I R 1923 Cal 392 (396) · 82 Ind Cas 776, Rajchandra Das v. Kalakanla Das.
- (1897) 1897 Pun Re No 3, Sewal Ram v. Kundan Lal.
- (1928) A I R 1928 Lah 418 (414): 107 Ind Cas 494, Kerpa Ram v. Nand Lal. (1928) A I R 1928 Lah 414 (417): 108 Ind Cas 891, Maniger v. Hazaregir.

Article 166

view is correct. There does not seem to be any provision in the Code for naming parties in applications.

See also the undermentioned cases.3

Notes 11-14

- 12. Notice to persons affected by application to set aside sale - Limitation. - Under the proviso to Order 21 Rule 92 sub. rule 2 of the Civil Procedure Code, no order setting aside a sale in execution of a decree shall be made unless notice of the application to set aside the sale has been given to all persons affected thereby, The period of limitation prescribed by this Article only refers to an application to set aside a sale and does not refer to the notice abovementioned. Hence, where an application to set aside a sale has been made within the period of thirty days from the date of the sale, the sale may be set aside although the notice required by the above provision is given after the expiry of such period.1
- 13. Application by notice of motion, when deemed as made. - See Note 3 to Article 183 infra.
- 14. Suit to avoid sale treated as proceeding under Section 47, Civil Procedure Code-Limitation.-Where a suit to avoid a cale is treated as a proceeding under Section 47 of the Code of Civil
 - (1914) A I R 1914 Oudh 307 (307, 308) : 17 Oudh Cas 306 : 25 Ind Cas 907,
 - Ghasanfar Husain v. Ram Rattan. (1933) 143 Ind Cas 552 (555) (FB) (Cochin), Antha Allas v. Ananthasankara
 - Ayyar. (1932) A I R 1992 Pat 255 (256) 11 Pat 504 139 Ind Cas 810, Netas Dutia
 - v Bishim Lai Sao (1990) A I R 1990 All 167 (168) 124 Ind Ces 23, Jit Singh v Daulatia Tenta (A judgment-debtor making an application to set saids a sale under O 21 R 89 need not show the name of the auction-purchaser

in the array of parties) [Sec (1924) A I R 1924 Pat 37 (38) 2 Pat 800 75 Ind Cas 430, Mt Zainab Bibs v Paras Nath]

3 (1932) A I R 1932 Cal 733 (788) 140 Ind Cas 446, Sailabala Dasse v Kalipada Banersee (An application to set aside sale in execution

- 1. (1924) A I R 1924 Pat 87 (37, 38) 2 Pat 800 75 Ind Cas 430. Mt Zamab v Paras Nath
 - (1926) A I R 1926 Pat 206 (267) 94 Ind Cas 31, Ishuardas Maruars v. Disesuar Lal
 - (1928) A I R 1928 Lah 413 (414) 107 Ind Cas 494, Kerpa Ram v Nand Lal (1922) A I R 1922 Oudh 129 (130) 68 Ind Cas 288, Abdur Rahman v Har
 - Narayan (1918) 19 Ind Cas 475 (476) 37 Bom 387, Ganesh Bab Nask v Vilhal Vaman Mahalya
 - (1929) A I R 1929 Mad 763 (764) 52 Mad 861 121 Ind Cas 855, Narayana Sahu v Petamma
 - (1932) A I R 1932 Pat 255 (256) 11 Pat 504 139 Ind Cas S10, Natas Dutta v Dishun Lal Sao

1

Article 166 Notes 14—17 Procedure, the period of limitation applicable is that applicable to an application under Section 47¹ and the application must be deemed, for purposes of limitation, to have been filed on the day on which the suit was instituted.²

- 15. Setting aside of sale under inherent power—Limitetion.

 —As seen in Nate 28 in Section 3 ante, the law of limitation does not apply to what the Conrt does in the exercise of its inherent power. Hence, where the Court has inherent power to set aside a sale, this Article does not apply and the Court can set aside the sale in the exercise of such power although the period of limitation under this Article may have expired. 1
- 16. Fresh ground for setting aside sale, if can be urged after limitation.—Where an application to set aside a sale is made in time, new grounds of objection to the sale cannot be urged for the first time after the expiry of the period of limitation for filling an application to set aside the salo.¹ The reason is that the preferring of such objections must be treated as a fresh application. But, where any grounds have been already raised in the original application, further particulars of such grounds can be given after the expiry of the period of limitation under this Article.²
- 17. Extension of time under this Article. The period of limitation fixed by this Article cannot be enlarged except under the express provisions of the Act. 1 The Court has no power to extend such

Note 14

(1921) A I R 1921 Bom 265 (289, 289): 45 Bom 174: 58 Ind Cas 231, Bhaichand Kirparam v. Ranchhaddas Manchharam. (Do.)
 (1927) A I R 1927 Cal 614 (615): 64 Cal 419: 103 Ind Cas 233, Umapati Mukerjee v. Sheibh Soleman.

(1900) 22 All 376 (377): 1900 All W N 129, Lalman Das v. Jagannath Singh.

 (1935) A I R 1935 Cal 15 (17): 155 Ind Cas 849, Protita Sundari Debi v. Sarada Charan Goho.

Note 15

Chelliar v. Dava Sahib. (Party guilty of laches-Inherent power cannot be exercised in his favour)]

Note 16

- (1932) A I R 1932 Lah 576 (576): 140 Ind Cas 715, Volkart Brothers of Karachi v. Ghulam Hamdani.
- 2. (1926) ATR 1926 All 305 (305, 306): 92 'Ind Cas 467: 49 All 256, Ram Saran Das v. Gardhar, Lal.

Nnte 17

 (1925) A I R 1925 Cal 515 (516): 78 Ind Cas 149, Giribala Dasi v. Tarak Nath Jatan. period.2 Hence, the fact that the Court fixes a date hevend thirty days from the sale for hearing objections to the sale will not enable an application to set aside the sale being made after the expiry of the thirty days' period prescribed by this Article.3

Article 166 Note 17

Section 5 ante will only apply to an application to set aside a sale in execution where the Section has been made applicable to such application by or under any enactment for the time heing in force. Hence, where the Section has not been so made applicable, the Court has no power under the Section to admit such an application after the period of thirty days prescribed by this Article.4

- (1914) A I R 1914 Cal 723 (729) . 21 Ind Cas 249. Joinndry Mohun v. Brojendra Kumar.
- (1932) A I R 1932 Cal 381 (381): 137 Ind Cas 378, Surja Kanta Das v. Jogendra Nath Dutt.
- (1919) A I R 1919 Lah 422 (422, 423) : 50 Ind Cas 610, Asa Nand v. Jhanon
- (1933) A I R 1933 Rang 8 (9) . 147 Ind Cas 130, Maung Lat v. Maung Kyaw Tha
- (1928) A I R 1928 Rang 286 (286) 6 Rang 490: 113 Ind Cas 810, Mahomed Cassim v A J David
- (1926) A I R 1926 Lah 639 (640) 96 Ind Cas 377, Muhmmad Din v. Sharanpat. (1917) A I R 1917 Pat 344 (344) . 39 Ind Cas 664, Rameshwar Misser v.
- Sureshwar Masser (1896) 1 Cal W N 67 (70), Karlash Chandra Holdar v. Bissonath Paramanic.
- (1918) A I R 1918 Cal 77 (78): 48 Ind Cas 970. Abha Munshs v. Komu Molla. [Ses (1907) 1907 Pun Re No. 92, Gurdhars Lal v. Bhago]
- 2. (1934) A I R 1934 Lah 875 (876): 155 Ind Cas 603, Buts Ram v. Sardar
- Singh (Time cannot be extended under S 148, C. P C.) (1911) 10 Ind Cas 149 (152) (Cal), Bibs Sharofan v. Mahomed Habibuddin.
 - (1934) A I R 1934 Pesh 25 (26) 148 Ind Cas 1082, Bharchand v Mt Najab
 - Sultan (Do)

 (1935) A I R 1933 Rang 466 (471) 13 Rang 595. 159 Ind Gas 945, R. P. L.

 S Chettiar v Oficial Recenter, Rammad (Inherent power of the Court cannot be invoked to override the time prescribed by the Limitation Act)
 - (1921) A I R 1924 All 668 (669) 46 All 631 . 79 Ind Cas 997, Tota Ram v. Panna Lal (Do)
 - (See (1929) A I R 1929 All 485 (492) 121 Ind Cas 552, Baldeo Prasad v Sakhdeo Prasad. (Do)
 - (1917) A I R 1917 Mad 176 (177) 33 Ind Cas 996, Vannisami Therar v. Periagasuams Therar (Court has no inherent power to extend the period for depositing the amount under O 21 R 89, C P. C B
- 3. (1920) A I R. 1920 Lah 71 (71) 57 Ind Cas 224, Genda Mal v. Munsh, Ram. 4 (1934) A I R 1934 All S14 (314) 151 Ind Cas 244, Narotam Das v. Bhagwan
 - (1911) 10 Ind Cas 149 (152) (Cal), Bibi Sharofan v Mahomed Habibuddin. (1919) A I R 1919 Lah 422 (422) . 50 Ind Cas 610, Asa Nand v. Jhangs
 - Rani (1919) A I R 1919 Lah 152 (154) 51 Ind Cas 447, Bash, Ram v. Hassan Muhammad
 - (1925) A I R 1925 Oudh 411 (412) 87 Ind Cas 722, Ram Autar v. Sheo Piarcy Lal.
 - (1934) \ I R 1934 Pesh 25 (26) . 148 Ind Cas 1082, Bhag Chand v. Mt. Najab Sultan.

As Section 6 ante only applies to suits and applications for execution, it does not apply to an application to set aside a sale in execution and hence, the minority or other disability of the applicant will not affect the period of limitation for such an application. Under the Act of 1877 the law was different on this point. Section 7 of that Act (which corresponded to Section 6 of the present Act) applied to all applications and not only to applications for execution and hence, it was held that the minority or other disability of the applicant was a ground for extending under that Section the period of limitation for an application to set aside a sale.

The time occupied in obtaining a copy of the report of the sale officer cannot be excluded in computing the period of limitation under the Article. The reason is that Section 12 ante which provides for the exclusion of time requisite for obtaining copies in certain cases does not annly to a wacceeding to set saids an execution sale.

Section 13 ante which provides for the exclusion of the time during which the defendant has been absent from British India applies only to suits and hence does not apply to an application to set aside a sale.⁶

Under clause 2 of Section 14, ante, the applicant will be entitled to the exclusion of the time occupied by a prior application by him to set axide the sale, where such application has been presecuted in good faith in a Court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it. Where, however, there has not been a bone fide mistake of jurisdiction on the part of the applicant, or where the prior application has not been made to a Court, 10 he will not be entitled to any exclusion of time under the Section.

Where the period of limitation prescribed by this Article expires on a day when the Conrt is closed, the application may be made,

 (1935) A I R 1935 Pat 450 (450): 159 Ind Cas 253, Bholanath v. Mt. Sayedatunnissa Begum.

C. (1911) 11 Ind Cas 401 (402) (Cal), Fant Karım v. Ananda Mohan.

(1887) 9 All 411 (413) : 1887 All W N 58, Baldeo Singh v. Kishon Lal.

(1910) 6 Ind Cas 488 (489) (Lah), Gujjar Mal v. Sita Ram.

[See (1000) 1 To 2 Cho and tang and E No. T D & Wanne Todh.

Act H

- (1929) A I R 1929 All 593 (596): 51 All 910: 119 Ind Cas 103, Dipchard v. Sheo Prasad.
- 8, (1880) 3 All 195 (186), Ahsan Khan v. Ganga Ram.
- (1899) 23 Bom 531 (535): 1 Bom L R 33, Narayan v. Rasulkhan. (Application to Collector to set aside sale—Second application to Civil Court after limitation)
- 10 See (1920) A I R 1920 Bom 130 (130) 44 Bom 50; 54 Ind Cas 670, Tyran-(Collector or Court.) Gadagagre

under Section 4 ante, on the day on which the Court re-opens. 11 See also Note 18 below.

18. Computation of limitation under the Article — Effect of fraud. — By virtue of Section 18 ante, when an applicant for setting aside a sale has been kept from the knowledge of his right to apply by the fraud of the opposite party, he will be entitled to have the period of limitation reckoned from the dato when he became aware of the fraud. In order to claim the benefit of Section 18, two factors are necessary.

- (1) there must be fraud by the opposito party,2 and
- (2) such fraud must have resulted in the applicant being kept from the knowledge of his right to apply.³

Hence, the mere fact that the applicant was unaware of the sale proceedings is not sufficient to attract the provisions of Section 18. It must be established that such ignorance on his part was brought about by the fraud of the opposite party * Conversely, the fact that

- 11 (1938) A I R 1938 Dom 209 (209, 210) 175 Ind Cas 221, Vecrappa Chan
 - nappa v Iralappa Malags (1933) AI B 1933 Cal 886 (386) 60 Cal 1106 . 147 Ind Cas 797, Jnanendrakunar v Amritakrishna Dutta
 - [See also (1903) 6 Oudh Cas 68 (70), Ram Nath v. Muris Dhar. (Deposit under Order 21 Rule 89 made on re-opening day is
 - sufficient) (1922) A I R 1922 All 195 (196) · 67 Ind Cas 321, Durga Prazad v.
 - Babu Lal. (Do) (1906) 7 Mahe Lal v. Sheo Prasad. (Do.) (1906) 9 Oudh Cas 214 (215), Radhe Lal v. Sheo Prasad. (Do.) (1990) 19 All 140 (140) 1897 AH W N 7. Bashur-ud-diu v Jhors

Note 18

- (1923) A I R 1923 All 282 (283, 284)
 All 316 71 Ind Cas 631, Sheo Ram Kogra v Ili amunnasa Biba
 - (1914) A I R 1914 Lah 209 (209) 23 Ind Cas 397, Apral Ali . Aman Ali
 - (1916) A I R 1916 All 184 (185) · 85 Ind Cas 473, Natir Husain v. Kanhaya Lat
 - (1899) 26 Cal 539 (545) 3 Cal W N 403, Hyra Lal Ghoss v. Chundra Kanto Ghose
 - (1924) 28 Cal W N 56 (56) (S N)

Singh (Do)]

- (1929) A I R 1929 Nag 305 (310) 116 Ind Cas 65, Sunderaba: v. Bapuna. 2. (1919) A I B 1919 Lah 152 (154) 51 Ind Cas 447, Bashi Ram v Hassan
 - Muhammad (1922) A I B 1922 Pat 507 (510) 77 Ind Cas 957 2 Pat 65, Bandhurs
 - Chawdhuri v Deonandhan Prasad Singh (1896) 1 Cal W N 67 (70), Kailash Chandra Haldar v. Bissonath Parama-
 - 1932) A I R 1932 Cal 627 (629) 140 Ind Cas 732, Galstaun v. Mahammad
- Husain 3. (1921) A I R 1921 Pat 145 (147) 61 Ind Cas 823, Babu Das Narayan Singh
- v. Muhammad Yusuf (1929) A I R 1929 Rang 62 (63) 7 Rang 101 117 Ind Cas 63, Dourammah
 - v. A. N. A. N. Chethar (1911) 11 Ind Cas 498 (442) (Cal), Budrananda Thalur v. Petthi Chand
 - (1912) 16 Ind Cas 464 (465) (Cal), Narayan Sahu v Damodar Das
- (1925) A I R 1925 Cal 515 (516). 78 Ind Cas 149, Giribala Dass v. Taral. Nath.

Article 166 Notes 17—18

the opposite party has been guilty of fraudulent conduct is not sufficient to extend the period of limitation for the application. The fraud must have resulted in the applicant being kept in ignorance of his right to apply. Thus, the fact that the opposite party has, by fraud, induced the applicant not to apply within the period of limitation is not sufficient to extend limitation under the Section.⁵

Where an execution sale is sought to be set aside on the ground of fraud in the course of the execution proceedings leading up to the sale, and such frand also has resulted in the applicant being kept from the knowledge of his right to apply, it is not necessary to prove any independent fraud in order to entitle the applicant to an extension of limitation. In other words, fraud antecedent to the sale may also be a ground for the extension of limitation, if by such fraud the applicant has been kept from the knowledge of his right to apply.6 A contrary view, however, has been taken in certain decisions in which it has been held that in order to entitle an applicant to an extension of limitation on the ground of fraud, the fraud must be one committed after the eale and not merely one committed in bringing about the sale. It is submitted that such a view is not correct. There is no reason, on the wording of Section 18, to restrict the frand contemplated by that Section to fraud committed after the accrual of the cause of action. In fact, as seen in Noto 2 to Section 18, it would be violating the provisions of Section 9 to hold that where there is no fraud sufficient to extend the period of limitation at the time of the accrual of the cause of action and consequently limitation begins to run, the occurrence of fraud subsequently will stop the running of limitation.

Where the applicant has been kept in ignorance of his right to apply by the frand of the opposite party, the applicant is entitled to have limitation computed from the time when he comes to know of 5. (1918) A IR 1016 All 356 (337): 43 Ind Cas 671, Harnin Chander v. Cunga

Buhun.

6. (1924) A I R 1924 Pat 496 (497): 80 Ind Cas 761, Thakur Makton v. Jhaman Makton

man Maniem (1915) A I R 1915 Cal 268 (271): 27 Ind Cas 291, Arjun Das v. Gunendra

hu v. Damodar Das.
v. Muhand I al Dutt.
Cas 555. Nabin Chandra v.

(1925) A I R 1925 Pat 521 (522): 85 Ind Cas 622, Bajrang Prasad Singh v. Mt. Sonejhara Kuer.

(1921) A I R 1921 Cal 251 (252): 48 Cal 119: 60 Ind Cas 801, Bhusan Mani

Dasi v. Profulla Kresto Deb. (1923) AIR 1923 Mad 353 (354): 72 Ind Cas 46, Sheikh Muhammad

Rotther v. Subba Nacker.

[See (1977) A I B 1997 Cal G33 (636): 101 Ind Cas 199, Maharaj
Dahadur Singh v. Karani Mai. (Willul suppression of sale
notices—Fraud keeping knowledge of right to apply from applicant may be Interred.)

(1896) 1 Cal W N 67 (70), Kailash Chandra Haldar v. Bissonath Paramanic.
 (1920) A I R 1920 Pat 715 (725, 726), 57 Ind Cas 401, Jagdhar Missir v. Doran Khattea.

the fraud. Hence, where there has been such fraud, it is necessary to find when the applicant became aware of his right to apply so as to determine whether his application is within the period of limitation computed from the time of his becoming so aware. Where an applicant is entitled to an extension of time on the ground of fraud, his right will not be affected by the fact that the sale has been confirmed before he makes his amplication.

Under Section 18, time is extended only as against the party guilty of the fraud. Hence, the question has arisen whether the fraud of the decree-bolder or the auction-purchaser alone will be sufficient to extend the period of limitation for an application to set aside a sale. On this question there is a conflict of decisions. The views expressed may be summarised as follows:

- 1. The fraud of the decree-holder alone will be sufficient.10
- The fraud of the decree-holder alone will not be sufficient and unless the auction-purchaser also is guilty of fraud, there can be no extension of limitation.¹¹
- 3. The fraud of the auction-purchaser alone is sufficient 12
- 4 The fraud of the auction-purchaser alone is not sufficient and unless the decree-bolder also has been guilty of fraud, time cannot be extended in

Where an application to set aside a sale is prima facts barred by limitation, and the applicant claims an extension of limitation under Section 18, the burden is, to begin with, on the applicant to prove that he was, by the fraud of the opposite party, kept from the knowledge of his right to apply 15 But, when once such fraud is

9 (1028) 112 Ind Cas 847 (847) (Lab), Mr Jannat v Abdul Rahman (1037) I. L. R. (1937) 2 Cal. 496 (500), Charles de Sa Fragoco v Meher Ali (1923) A. I. R. 1933 All 282 (233) 45 All 316 71 Ind Cas 631, Shee Ram

Koer, v Ikramunnissa Bibi (1912) 16 Ind Cas 436 (436) (Cal), Nelmon; Singh v Brinda Dasya. (1922) A I R 1922 Pat 422 (423). 70 Ind Cas 675, Bam Pershad Lal y.

Chamars Singh.

[But see (1887) 14 Cal 679 (681), Gobind Chundra Majumdar v. Uma Charan Sen]

10 (1928) 54 Mad L Jour 24 (24) (N B C)

(1927) 99 Ind Cas 946 (947) (Cal), Kedar Hura v Asutosh Poy.

(1934) A I R 1934 All 255 (288) 55 All 613 147 Ind Cas 1114 (F B), Mt. Ballesha Kunuar v Harakh Chand

- (1916) A I R 1916 Mad 33 (38)
 38 Mad 1076
 29 Ind Cas 314, Payadanna Lakshminarasamma
 (1936) V I R 1936 Cal 706 (707)
 166 Ind Cas 127, Majaharah v. Mafi
 - Jadd: 1 Cas 317, Parthasarathy v. Ahindra
- 36 Mad 734 145 Ind Cas 388, Pulla 18 (1925) A I R 1925 Cal 1227 (1928) 86 Ind Cas 745, American v. Dicarila
- Prosad Boral 14 (1909) 2 Ind Cas 844 (845) 36 Cal 654, Purna Chandra Mandal v. Anulul Bisnas

^{8 (1918)} A I R 1918 Cal 77 (78) 48 Ind Cas 970, Abha Munshi v. Komu Mollah

Article 166 Notes 18-20 established, the burden is shifted to the opposite party to show that the applicant became aware of the fraud more than thirty days before the date of his application.¹⁵

- 19. Defence not barred. It is a general principle that limitation does not bar a defence. See Note 15 to Section 3 ante. Hence, where the judgment debtor continues to be in possession of the property sold, he can resist a sunt for possession by the purchaser on the ground that the sale is voidable by him (the judgment debtor), although be has not applied within the period of limitation under this Article, to set saide the sale.
- 20. Special or local law, period prescribed by. Under Section 29 sub-section 2 ante, where for any suit, appeal or application, a special or local law prescribes a period of limitation different from that prescribed by the First Schedule to this Act, the period prescribed by the special or local law must apply. Accordingly, it was beld in the undermentioned case! that the application to avoid the sale was barred under Section 231 of the Chota Nagnur Tenancy Act, although the application was not baired under this Article.
- (1928) AIR 1928 Cal 349 (350): 108 Ind Cas 33, Ramesh Chandra v. Birajasundar: Gupta.
 - (1918) A I R 1918 Cat 171 (173) : 46 Ind Cas 221, Ram Einkar Tenari v. Sthift Ram.
 - (1924) A I R 1924 Pat 496 (497) · 80 Ind Cas 761, Thahur Mahlon v. Jhaman Mahlon.
 - (1915) A I B 1915 Cal 268 (271) : 27 Ind Cas 294, Arjun Das v. Gunendra
 - Nath. (1938) A I R 1933 Cal 239 (340): 143 Ind Cas 281, Ramszaddin Basar v.
 - Nimadd. Basar. (1927) A I R 1927 Cal 633 (636): 101 Ind Cas 199, Maharaj Bahadur Singh
 - v. Karan: Mai. (1925) A I R 1925 Pat 521 (522): 85 Ind Cas 622, Bajrang Piasad v. Mt.
 - Sonejhari Kuer. (1929) A I R 1929 Pat 228 (229) . 117 Ind Cas 46, Dabu Lal v. Parem
 - (1929) A. I. N. 1979, Pat. 225 (229). 111 Ind. Cas. 30, Baba Bat V. Paten Kumars. (1912) 16 Ind Cas. 464 (465) (Cal), Narayan Sahu v. Damodar Das.
 - (1912) 16 Ind Cas 464 (405) (Cal), Narayan Sahu v. Damonar Das. (1926) A I R 1926 Cal 229 (231) : 67 Ind Cas 555, Nabin Chandra Haldar v.
 - Bipin Chandra Haldar. (17 Bom 311, Followed)
 (1928) 112 Ind Cas 847 (818) (Lah), Mt. Januat v. Abdul Rahman Khan.
 - Note 19
- (1926) A I R 1926 Bom 33 (34): 91 Ind Cas 426, Dharmoppa v. Veukappa. (Defendant can contend that the sale was brought about by fraud)

[But see (1923) A I R 1925 Cal St. (29): '78 Ind Cas 126, Joantswar Sthdar v Katlash Handal. (Order confirming the sale amounts to a material determination that none of the objections exist upon which the validity of the sale could have teen questioned]]

Note 20

 (1916) A I R 1916 Pat 49 (50): 87 Ind Cas 683, Nilmoni Goussimi v. Roban Majhi. 21. Starting point of limitation. — The starting point of limitation under the Article is the date of the sale and not that of the confirmation of the sale.

Article 166 Note 21

A sale in execution of a decree is not complete until the acceptance of the bid by the competent authority—the sale does not become complete merely on the highest bid being made.²

There is a difference of opinion as to whether acceptance by the Court of the highest bid is necessary to complete the sale, or whether acceptance of such bid by the officer conducting the sale is sufficient for the purpose. According to one view, a sale is not complete till the highest hid has been accepted by the Court. while according to another view, the acceptance of the bid by the officer conducting the sale is sufficient to complete the sale.

Again, according to certain decisions, the deposit of twenty-five per cent. of the purchase-money under Order 21 Rule 81 of the Civil Procedure Code is necessary to complete the sale, 5 while such

- (1936) A I R 1936 Pat 558 (559) 167 Ind Cas 225, Chuns Lal v Ram Rantipoy Prasad
- (1902) 29 Cal 626 (628) 6 Cal W N 776, Choudhry Keshrs Sahay v Gians Roy (Case under Section 310 A of the Civil Procedure Code of 1882)
- (1887) 14 Cal 644 (647), Kishors Mohun Boy v. Chunder Nath Pal (Meaning of "sale" in Article 138 of Act of 1877.)
 - (1912) 17 Ind Cas 884 (884) . 8 Nag L R 177, Wasudeo v. Hazalal.
- (1924) A I R 1924 Nag 108 (109) · 19 Nag L R 162 78 Ind Cas 47, Sitaram v. Asaram.
- 2 (1912) IT Ind Cas 783 (784) 35 All 65, Muush, Lat v Ram Narayan (1930) A I R 1930 Lah 41 (42) 118 I C 900, Abdulla Ehan v Ganpat Rai. (1928) A I R 1928 Nag 111 (112) 106 Ind Cas 333, Rousa v Baltram
 - (1938) 1939 Nag L Jour 10 (12), Ramchandra v Ai jun. (In case of an application to set aside a sale held by the Collector, the time under Art. 166 starts from the date when the bul 1, accepted by the Collector.)
- (1935) A I R 1935 Oudh 131 (192, 183) 153 Ind Cas 719 10 Luck 557, Have Shankar v Mt Amma Bib;
 - (1932) A I R 1932 Lab 525 (525) 138 Ind Cas 86, Jetha Mal v. Punjab d Sindh Bank Lid American
 - (1931) A 1 R 1931 Oudh 291 (292) 132 Ind Cas 263, Kanual Ram v. Mt. Gurder
 - (1934) A 1 R 1934 Ondh 25 (27) 9 Luck 393 147 Ind Cas 1077, Iqbal Naram v Rashumar Bakhshi
 - (1923) A 1 R 1923 Pat 525 (527) 2 Pat 548 76 Ind Cas 113, Jashhadar Jha
- (1931) A.I. R. 1931 Lah 78 (78) 131 Ind Cas 227, Nur Drn v. Bulagi Mal & Sons (See also (1933) A.I. R. 1933 Nag. 123 (124) 141 Ind Cas. 367 - 29
- Nag L R 52, Manualat Vanhelat]

 5, (1919) A 1 R 1919 Lab 399 (310) 50 Ind Cas 914. Mt. Ehairon v. Alliance
- Bank of Simila

 (1909) I Ind Cas 12 (12) (Lah), Atma Simph v Dunn Chaud (When the
 decree-bolder himself is the auction purchaser and no deposit is made
 by him, the date of the completion of the sale is that date on which
 the executing Court, acting under the second part of Section 294 of
 - the Civil Procedure Code orders the purchase money to be set off against the amount of decree)
 (1934) A I R 1934 Pesh 25 (27) 148 Ind Cas 1082, Bhag Chand v. Mt. Nanab Sullan (Do.)

Article 166 Notes 21—22 deposit is not necessary according to certain other decisions.6

But, payment of the full amount of the purchase money is not necessary for the completion of a sale in execution.

22. Order setting aside sale subsequently reversed — Limitation for fresh application to set aside sale. — In the undermentioned caso, 'a sale was set aside after thirty days from the date of the sale on the application of one of the judgment-debtors. But, the order setting aside the sale was afterwards reversed in revision by the High Const and the sale was confirmed. Thereupon the other judgment-debtors applied to have the sale sate aside. It was contended on their behalf that when the sale had been set aside the judgment-debtors ceased to have any cause of action to apply for setting aside the sale, and that the confirmation of the sale by the High Court gave them a fresh canse of action and that they were entitled to a period of thirty days from the date of such confirmation. In overruling the contention, a learned Judge of the Patna High Court observed as follows:

"I can well imagine a case in which before the expiry of the time for making an application for setting aside the sale it is set aside by the Court errnneously and thereby the party who is entitled tn apply for setting it aside is unable to do so. If, altorwards, the sale which was erroneously set aside is affirmed, the party whose right was taken away by the Court may well claim that the period during which nn account of the sale being non-existent he was prevented from making an application for setting it aside should be excluded, but, here, as I have said, the antire period expired before the sale was actually set aside."

Article 167

a decree.

167 * Complaining of resistance or obstruction to delivery of possession of immoveable property decreed or sold in execution of

Act of 1877

Thirty days. The date of the resistance, ob-

struction, or disposession.

^{6. (1924)} A I R 1924 Nag 108 (109) : 19 Nag L R 162 : 78 Ind Cas 47, Sitaram v. Asaram.

⁽¹⁹³⁵⁾ A I R 1935 Pesh 160 (161) : 159 I C. 273. Padam Lal v. Mohan Lal. (See (1936) A I R 1936 Bom 375 (335) : 95 Ind Cas 549, Vana Khubah Patit v. Raitlal Bhaidas]

^{7 (1919)} A I R 1919 Lah 399 (310): 50 Ind Cas 914, Mt. Khairan v. Alliance Bank of Simila. (Dissenting from 1 Ind Cas 12) Nute 22

^{1 (1936)} A 1 R 1936 Pat 553 (559) . 167 Ind Cas 525, Chuns Lal v. Ram Ran 1190y Prasad Singh.

Sunopsis

- 1. Legislative changes.
- 2. Starting point of limitation Second obstruction.
- 3. Application beyond time Conversion into a suit.
- 4. Minority and limitation.
- 5. Transfer of execution case to another Court and limitation for an application under Order 21 Rule 97.
- Legislative changes.
- 1 In Articles 158 and 160 of the Act of 1871 (corresponding to the present Articles 165 and 167), the following cases alone were dealt with :-
 - (1) Dispossession by a decree-holder (Article 158).
 - (ii) Dispossession by an auction-purchaser (Article 160).
 - (iii) Obstruction or resistance to the delivery of possession to the auction-purchaser (Article 160)

There was no provision for cases of obstruction or resistance to the delivery of mossession to the decree-holder.

- 2. In the Act of 1877, Article 165 dealt with cases of dispossession by a decree-holder as well as by an auction-purchaser, and Article 167 dealt with the same two eases, and also with cases of obstruction or resistance to the delivery of possession to the decree-holder and to the auction-purchaser, so that Article 167 really included also the two eases dealt with by Article 165
- 3 The present Act has removed this redundancy by deleting from this Article the provision relating to dispossession and retaining only the provision relating to obstruction and resistance to the delivery of possession.1
- 2. Starting point of limitation-Second obstruction.-Time. under this Article, runs from the date of "the resistance or obstruction." Suppose now a decree-holder for possession or a purchaser of immovable property in an execution sale is resisted in the delivery of possession and possession is not consequently delivered to him and he applies again for delivery of possession and is again resisted and an application complaining of the latter resistance is made within

Act of 1871

to delivery of possession of ammoveable property sold in execution of a decree, or of dispossession in the delivers of possession to the purchaser of such property

160 -Complaining of resistance or obstruction | Thirty days | The date of the resistance, ob-

struction, or dispossession.

Article 167 Notes

1_2

Act of 1859

No corresponding provision

Article 167 Notes 2-3.

thirty days thereof, what is the starting point of limitation for the application? It has been held generally that the starting point is the date of the second obstruction, the reason being that the resistance referred to in Column 3 of the Article is the same as that complained of in the first column. It is immaterial that no application under Order 21 Rule 97 of the Civil Procedure Code was made on the first resistance,3 or that the application was made and dismissed for default.3 According to the Bombay High Court, however, if the second obstruction is by the same person who made the first obstruction and in the same character, the starting point of limitation would be the date of the earlier resistance, the reason being that the second resistance is really not a fresh one.4

On the question whether on obstruction, a decree-holder or auction nurchaser is bound to apply for removal of the obstruction or whether he can apply again for possession, see the Authors' Commentaries on the Civil Procedure Code, Order 21 Rule 97, Notes 4 and 5 and the undermontioned cases.5

Note 2							
1	,			- ··· ·	" '- 1 Dets v		
		•			1. v. Raj — Same		
	(1896)	obstructor.) 18 All 233 (236) : 1 (Obstructions by the	896 An W N	84, Naram D	as v. Hazanı Lal		
	(1928)	1928 Mad W N 236 (See (1891) 1891 All	(236), Ammu h	oislamma v. F Budhan v. F	. Manakkal. azal Alı.]		
2		A I R 1921 Mad 55 Menappan Seriai	9 (561) : 66 I	nd Cas 722, 1	Mayappa Chetty v.		
	(1882)	5 Mad 113 (114), Re	ımaseka ra v. D	harmaraya. (D	ecree for possession.)		
8.	(1936)	A I R 1938 Cal 352 Kıranshashı Choud	(353) : 176 Ind hran:	Cas 816, Surar	na Sundars Deis V.		
4.	(1933)	A I R 1933 Bom 457 v. Tanu Sakhu	(459, 460) 14	6 Ind Cas 11 (F			
					,		
		Pillas.					
	(1879)	5 Cal 831 (332, 833) Nund Roy.	5 Ind Jur 136	, Shoteenath	Mookerice v. Obney		
		(See also (1881) 7 A	(1 79 (91) -		1		
		v. Golal Che	ind. (Thou		1.1		
		Code, says 'm	ay apply,'		•		
		prescribed by	Article 167.)	•			
		(1912) 16 Ind Cas 4: rajulu Naide	32 (432) (Mad),	Muthusamy	Goundan v. Elhi-		
		(1933) A I R 1933	c. Nag 869 (370) :	147 Ind Cas	582. Nathu Hart		
		shankar v. F	atusa.				
		(1886) 10 Mad 53 (56	3) : 11 Ind Jur 1	19, Sein v. Mu	(huswami.)		

into a suit, the law of limitation applicable is the law relating to suits 1

Article 167 Notes 3-5

Where an application under Order 21 Rule 97 of the Code of Civil Procedure has been made after the layes of one month of the obstruction, the Court should not convert it into a suit and then dismiss the suit on the ground that the application was barred by time. The Court should dismiss the application itself as barred by time instead of converting the application into a suit and dismissing it, thereby making such dismissal a bar to a further suit.

- Minority and limitation. See Note 13 to Section 6 ante, and the undermentioned case.¹
- 5. Transfer of execution case to another Court and limitation for an application under Order 21 Rule 97.—A decree-holder auction.purchaser applied to the Bombay High Court under Order 21 Rule 97 and also for further execution under Order 21 Rule 97 and also for further execution under Order 21 Rule 50 against a partner of the pudgement-debtor firm The Bombay High Court transferred the decree for execution to the Sind Court. The Sind Court held that the matter of the removal of the obstruction not being in execution, it did not have to deal with the application under Order 21 Rule 97. The decree-holder then made a fresh application under Order 21 Rule 97 to the Sind Court which was dismissed as barred. On appeal it was held that the application under Order 21 Rule 97 being by a decree-holder auction-purchaser, the matter was one relating to execution and also that time for the said application should be computed from the date of the application to the Bombay High Court.

168. For the readmission of an appeal dismissed for want of	Thirty days.	The the sal.	date of dismis-
prosecution.			

Article 168

Act of 1877, Article 168, Act of 1871, Article 161

Same as above. Act of 1859

No corresponding provision.

Note 3

- 1. (1892) 18 Bom 37 (40), Namdev v Ramchandra.
- (1885) 1885 Bem P J 163 (164), Haribha: Gangadas v Balay: Pandurang 2, (1910) 6 Ind Cis 285 (285) (Mad), Valliamma: v Shanmugam Pilla:
 - [See also (1897) 21 Born 392 (393), Lola v. Narayan]

Note 4

 (1897) 11 Bom 473 (474), Vanayakrav Amrit v Detrao Gound (Application under Order 21 Rule 97 should be made within one month of attainment of majority)

Note 5

 (1936) A I R 1936 Sind 11 (13) . 161 Ind Cas 524 30 Sind L R 290, British India Steam Nai igation Co. Ltd. v A. M. Jinanjee & Co. Article 168 Notes 1-2

Synopsis

- Legislative changes.
- 2. Scope of the Article.
- 3. "Dismissed for want of prosecution."
 - 4. Application to restore appeal rejected under Order 41 ... Rule 10.
 - Application to restore appeal rejected for non-payment of conressee.
 - 6. Dismissal without jurisdiction.
- Application made in time Party impleaded afterwards — Effect.
- 8. Starting point.
 - 9. Court cannot extend time prescribed by this Article.
 - Rangoon High Court Rules of Procedure, Rule 9, sub-rule 2.

Other Topics

Application for re-admission of appear
'Rejection' of appeal is not 'dismissal'
Section 6 and this Article
Section 6 is not applicable

1. Legislative changes.

- There was no provision corresponding to this Article in the Act of 1859. Section 347 of the Civil Procedure Code, 1859, however, contained a provision that an application for re-admission of an appeal dismissed for want of prosecution may be made within thirty days of the date of dismissal.
- Article 161 of the Act of 1871 introduced the provision corresponding to the present Article.
- Scope of the Article. This Article applies to an application
 for the re-admission of an appeal dismissed for want of prosecution.
 It has been held that the application referred to is one under the
 Code of Civil Procedure and that the Articlo has no application to

Article 168 - Note 1

(1867) S Suth W R 361 (261, 362), Shaukh Mittoo Khan v. Ruhmun Khan.
 (1868) 10 Suth W R 437 (437), Tarkales Dabes v. Nitya Moyce Dabia.
 (1868) 10 Suth W R 450 (451) : 2 Beng L R A O 110, Tara Chand Ghose v.

Anand Chundra Choudhry.

Article 168 Notes 2—3

applications for re-admission under the Rules of the High Court.² Again, a Court can restore, under its subscent powers, an appeal which has been rejected or dismissed in cases not covered by a specific provision of law.³ An application by a party in such cases invoking the Court's inherent powers for restoration of such appeal is not governed by any period of limitation.⁴ The Articlo only applies to a dismissal for default of prosecution and not to an application to set aside a compromise decree in appeal on the ground of fraud.⁵

- 3. "Dismissed for want of prosecution." Order 41 Rule 19 of the Code of Civil Proceduro provides for an application for the re-admission of an appeal dismissed:—
 - under Order 41 Rule 11 sub.rule 2, where, without sending notice to the respondent, the Court fixes a day for hearing the appellant and be fails to appear on such date, or
 - 2. under Order 41 Rule 17, where, after notice to the respondent, the Court fixes a day for hearing and the appellant fails to appear on that day, or
 - 3 under Order 41 Rule 18, where, on the day fixed for hearing it is found that notice has not been served on the respondent in consequence of the default of the appellant in paying the costs of process.

The dismissal in each of the above cases is clearly a dismissal "for want of prosecution" within the meaning of this Article and the application for re-admission in such cases would be governed by this Article. But the Article is not necessarily confined to applications

- 2 (1805) 23 Cal 330 (346, 347), Ramhars Sahu v Madan Mohan Metter (This case was overrided in 24 (al 350 in so far as it decided that the dismissal could be set aside under the Roles of the Court, but did not affect the decision so far as it held that limitation will not apply to applications under Rules of Court !
 - (1921) A I R 1921 Cal 67 (70) 48 Cal 817: 66 Ind Cas 209, Narendra Lal Khan v. Tarubala Dass: (See also (1908) 82 Bom 1 (6) 9 Bom L R 509, Wadia Gandhy & Co. v. Pursholtum Svoss)
- (1937) A I R 1937 Oudh 426 (426, 427)
 170 Ind Cas 155. 13 Luck 425, Firm Anant Ram Mangat Ram v Firm Ram Sarup
 - (1886) 8 All 315 (319) * 13 Ind App 57 4 Sar 707 (P C), Baluant Singh v. Daulat Singh
- (1920) A I R 1920 All 112 (114) 42 All 626 60 Ind Cts 81, Sundar v. Habib Chick
- 4. See Note 28 to Section 8, ante
 - [See also (1921) A I R 1921 Cal 67 (70): 48 Cal 817 66 Ind Cas 209, Narendra Lal Khan v Tarubala Dassi (1921) A I R 1921 Bom 20 (20, 22) 45 Bom 648 60 Ind Cas 919.
 - Sonubas Daburao v Shitajiraa Krishnaraa 1 [But see (1937) A I R 1937 Oudh 426 (427) 170 Ind Cas 155 13 Luck
- 425, Firm Anant Ram Mangat Ram v. Firm Ram Sarup]
 5. (1915) A I R 1915 Cal G22 (623) 27 Ind Cas 629, Peary Choudhry v
 Sonooru Dass

Note 3

 (1921) A I R 1921 Bom 20 (20, 22) 45 Bom 648 60 Ind C1s 919, Sonuba: v. Shitajirao Krishnarao Artiole 168 Notes 3-4 under Order 41 Rule 19. A striking off of an appeal, for instance, before the date fixed fur hearing, fur default if payment of process fees is not a dismissal under Rule 18 in Order 41 and an application to re-admit such appeal is not one under Order 41 Rule 19. Under Rule 9 of the Appellate Side Rules of the Rangoon High Court, however, an application will lie for auch re-admission and it has been held that the application must be regarded as one under the Code of Civil Procedure. Article 168 will apply to such an application also.³

4. Application to restore appeal rejected under Order 41 Rule 10. - Can a Court restore an appeal which has been rejected under Order 41 Rule 10 fnr failure tn fnrnish security for costs ? If so, what is the Article applicable to such cases ?1 It has been held in the undermentioned case2 that Section 107 read with Order 25 Rule 2 of the Civil Procedure Code empowers the Appellate Court to set aside the rejection of an appeal under Order 41 Rule 10 and that application for that purpose would be governed by this Article. If an application does lie under Section 107 read with Order 25 Rule 2. it may be conceded that this Article will apply to such an application. But it is submitted that an application will not lie under Section 107 and Order 25 Rule 2 nf the Code, to set aside a rejection of an appeal under Order 41 Rule 10. Order 25 Rule 2 refers to the dismissal of suits and Order 41 Rule 10 refers to a rejection of an appeal. The Codo uses the word "rejection" in a sense different from that of "dismissal," and a Rule which applies to a dismissal of a suit cannot be applied by reference to Section 107 nf the Code to a rejection of an appeal. This is in consonance with the general trend of opinion that the rejection of an appeal under Order 41 Rule 10 can be set aside under the inherent power of the Court,3 for, the Court could not act under its inherent power where there is a specific provision under the Code, namely, Section 107 under which it could act.

If, therefore, an application in set aside the rejection of an appeal can only be under the Court's interest power, is such an application governed by this Article? It is submitted that it is not. A rejection of an appeal cannot be considered to be a dismissal of the appeal within the meaning of this Article, and, secondly, it is a general principle of law that the law of limitation does mut apply to the exercise by the

^{2. (1930)} A I R 1930 Rang 228 (234) : 8 Rang 380 : 127 Ind Cas 161 (F B).

Abdut Ganny v. Mrs. I. M. Russel.

⁽¹⁹³³⁾ A I R 1933 Rang 96 (97): 142 Ind Cas 185, Ma Sein v. S. T. R. M. Firm, (A I R 1930 Rang 228 (F B), Followed)

 ⁽¹⁹¹⁸⁾ A I R 1918 Cal 812 (613): 40 Ind Cas 234, Goljan Bib; v. Nafar Ali. (Question whether application under Order 41 Rule 19 lies and whether it is governed by Art. 168, was raived but was left open)

R. 2 of rejected

Court of its inherent powers and an application by a party invoking the exercise of the Court's inherent powers is not therefore governed by this Article.

- Article 168 Notes 4-6
- 5. Application to restore appeal rejected for non-payment of court-fee. - A files a memorandum of appeal but fails to pay sufficient stamp fee thereon. The Court grants him some time within which ho is to make good the deficiency. On his failure to so make good the deficiency, the Court rejects the memorandum of appeal. A applies for re-admission of the anneal. Does such an application lie. and if so, what is the limitation applicable to it? It has been assumed in the undermentioned case that such an application would lie and that it would be governed by this Article. It is submitted that this view does not seem to be correct. Order 41 Rule 3 provides for cases in which an appeal may be rejected, but the deficiency in payment of court-fee is not one of such cases. There is a conflict of opinion on the question whether Order 7 Rule 11 of the Civil Procedure Code read with Section 107 of that Code will enable a Court to reject an appeal for payment of insufficient court-fee, one view being that the Appellate Court can so reject an appeal,2 the contrary view being that Order 7 Rule 11 does not apply to such cases.3 If the first view is assumed to be correct, then a re-admission of the rejected appeal can only be under the Court's inherent powers, there being no specific provision in the Code for such re-admission. If the second view is assumed to be correct, the Appellate Court can only dismiss and not reject the appeal, but a re-admission of an appeal so dismissed can only be under the Court's inherent powers, there being no provision in the Code for any such re-admission. In either view an application for re-admission will not be governed by the law of limitation and therefore by this Article.
 - 6. Dismissal without jurisdiction. Where a dismissal of an appeal purporting to be under Order 41 Rule 17 was without jurisdiction, it was held by the High Court of Labore that the application to restore the appeal was not governed by this Article? The better ground on which the decision can be rested will, it is submitted.

Note 5

1. (1889) 1889 All W N 151 (151), Bhundar Tsuars v. Thakur Tsuars.

2 See Note 9 to S 149 of the Anthors' Commentaries on the Code of Civil Procedure [See also 1992] A I R 1932 Pat 281 (282) * 63 Ind Cas 99, Sura; Pal

Pandey v Uttim Pandey]
(1920) A I R 1920 Pat 603 (609) 55 Ind Cas 502, Sirdar Singh v.
F. F. Christian]

3, See Note 9 to 8, 149 of the Anthors' Commentaries on the Code of Civil Procedure

 (1922) A I R 1922 Nag 60 (63] 18 Nag L R 11.76 Ind Cas 884, Seth Sagunchand v. Lala Chhabileram.

Note 6

 (1924) A I R 1924 Lah 279 (280) 69 Ind Cas 618, Ata Muhammad v. Shankar Das

^{4.} See cases cited in Foot-Note (4) to Note 2

Article 168 Notes 6-9 be that there is no valid dismissal in such a case, that therefore the appeal must be deemed to be pending, and that the application is really not one to restore any appeal dismissed at all, within the meaning of this Article.

- 7. Application made in time Party impleaded afterwards Effect. There is nothing in the Civil Procedure Code which provides that an application to restore an appeal under Order 41 Rule 19 should expressly implead a particular party. Ordinarily, it is advisable to mention the names of all persons on whom notices of the application should be served. But if no names are mentioned and the record enables the Conrt to ascertain the names of the persons on whom notices should be served and notice is, in fact, given, the application cannot be dismissed merely on the ground that the name of a party was not mentioned in the application and that an application could not be considered to have been made against bim within the period of limitation.
- 8. Starting point.—Time under this Article rune from the date of the order of dismissal, and not from the date of the applicant's knowledge of the order.¹

The minority of the applicant is no answer to a plea of limitation under this Article, as Section 6 ante does not apply to applications contemulated by this Article.²

9. Court cannot extend time prescribed by thie Article.—As has been eeen in Note 3 to Section 3 ante, the Court has no inherent power to extend the period of limitation prescribed by the various Articles. The Court has therefore no power to outertain an application governed by this Article for re-admission of an appeal, after the Prescribed period. Where an application for re-admission of an appeal which could have been filed under Order 41 Rule 19 of the Givil Procedure Code is not filed within the period prescribed by this Article, the Court cannot cutertain an application for re-admission, under its inherent powers. The reason is that where a specific

Note 7

 (1937) A I R 1937 All 362 (362); 169 Ind Cas 246, Mt. Kalarati v. Daya Nund.

Note 8

- (1920) A I R 1920 Lah 309 (309): 53 Ind Cas 789: 1 Lah 363, Bissi Mal v. Kesar Singh.
- 2 (1921) A I R 1921 Bom 20 (20, 22): 45 Bom 648: 50 Ind Cas 919, Sonubas Baburao v. Shuagirao Krishnarao.

- 1. (1890) 1890 All W N 196 (196), Manrakhan Mur v. Sobha Singh.
- 2. (1920) A 1 R 1920 Lah 309 (310) . 1 Lah 303 : 53 Ind Cas 789, Bissa Mal
 - (1920) A I R 1920 Ian 800 (310). 1 Ian 303 : 53 Ind Cas 155, Jose v. Kesar Singh.
 (1925) 91 Ind Cas 168 (169) (Iah), Deridas v. Anantram. (If so entertained, it will be tantamount to overriding the express statutory provision
 - enacted in S. 3.) (1921) A I R 1924 Mad 114 (116): 76 Ind Cas 836: 47 Mad 171, Krishnasucamy Nasda v. Chengalrova Nasda.

procedure is prescribed in the Code and the party neglects to avail himself of it, the inherent powers of the Court could not be invoked.3 Article 168 Notes 9---10

The provisions of Section 5 of the Act have not been made applicable to applications under Order 41 Rule 19 of the Code except in the Province of Madras. In provinces, therefore, in which that Section has not been extended to applications under Order 41 Rule 19 of the Code, the Court cannot resort to its provisions for extending the period prescribed by this Article.4 In the undermentioned cases an application clearly governed by this Article. but filed after time, was entertained as an application for review.

10. Randoon High Court Rules of Procedure; Rule 9 subrule 2 .- Rule 9 sub-rule 3 of the Appellate Side Rules of Procedure of the Rangoon High Court has been held to be ultra vires in so far as it prescribes a period of limitation less than that prescribed by Article 163 of this Act 1

169.' For the Thirty days. |The date of the dere-hearing of an appeal heard parte.

cree in appeal, or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree

Act of 1877

169 - For a re hearing of an appeal heard | Thirty days | The date of the ez parts in the absence of the respondent decree in appeal,

Acts of 1871 and 1859 No corresponding provision

(1924) A I R 1924 All 446 (447) 46 All 144 78 Ind Cus 415, Shib Prahash Joshi v Jhinguria

(1800) 1890 All W N 196 (196), Manrakhan Mesr v Sobha Singh (But see (1933) A I R 1933 Rung 96 (98) 142 Ind Cas 185, Ma Sern v S T R M Firm (Submitted not correct)]

- 3 Sec (1935) A I R 1935 Rung 466 (471) 13 Rung 595 159 Ind Cas 945. K P L S S Cheltiar v Official Receiver, Ramnad,
- 4. (1889) 1999 All W N 151 (151), Bhundar Tswars v Thakur Tsuars. (1879) 1879 Pun Re No 141, Mahi v Jawan
 - (1892) 1892 Pun Re No 44, Kabir v Khanasa Muhammad Khan.
 - (1925) 91 Ind Cas 169 (169) (Lah), Devedas v Anantram
 - (1933) A 1 R 1933 Rang 96 (97) 142 Ind Cas 185, Ma Sein v S T R M. F_{irm}
- 5 (1910) 6 Ind Cas 482 (483) (Lah), Kashs Ram v Gops Mal

Note 10

1 (1930) A 1 R 1930 Rung 223 (231, 232) 8 Rang 380 127 Ind Cas 161 (F B), Abdul Ganny v Mrs. I M Bussel

Article 169

Synopsis

- 1. Legislative changes.
- 2. Scope of the Article.
- 3. Burden of proof.
- 4. Starting point.
- 1. Legislative changes.—The starting point under the corresponding Article in the Act of 1877 was "the date of the decree in appeal;" so that a respondent could not apply for a re-hearing after thirty days from the date of the appellate decree oven if he had not been served at all and had no knowledge of the decree till long after the expiry of the said period. He could however appeal from the decree and the Appellate Court could interfere under clause (c) of Section 100 of the Civil Procedure Code.¹

The words "or where notice of the appeal...decree" wers access also.

2. Scope of the Article. — This Article refers to applications made under Order 41 Rule 21 of the Civil Procedure Code which provides for a re-hearing of an appeal heard and decided ex parte against a respondent. Article 164 ante provides for an application to set aside an ex parte decree in a suit. Where a defendant against whom a decree in the cuit had been passed ex parte applied in appeal to set the ex parte decree aside, the application was held, assuming the Appellate Court had power to entertain it, to be governed by Article 164 and not this Article.¹

As has been seen in the Notes to Section 3 ante, a Court has no discretion to extend the period of limitation prescribed by the Schedule. The period of thirty days fixed by this Article cannot therefore be extended by the Court.³

3. Burden of proof.—It is incumhent on the applicant to show that the application is within time. Where he asserts that he had

Article 169 - Note 1

1. (1896) 19 Mad 414 (416), Balaji Rau v. Sithabhoy.

Nnte 2

no knowledge of the decree, he must show when he actually got the knowledge.1

Article 169 Notes 3--4

- 4. Starting point. The starting point under this Article is-
 - 1. the date of the decree in appeal, or
 - 2, where notice of the appeal was not duly served, when the applicant has knowledge of the decreo, la

Where, under the Rules of the High Court, a first notice of the preliminary date for the appeal and a subsequent notice of the date fixed for hearing is required to be sent to the respondent, the question was raised, but not decided, whether "notice of the appeal" in the Article must be taken to refer to the first notice or to the subsequent notice.1

As to the meaning of the words "duly served," see Notes to Article 164, ante

An application for re-hearing presented originally within the period of limitation but returned for amendment and presented after amendment after the period of limitation, cannot be rejected as being out of time.2

to appeal as a pauper.

1 70.* For leave | Thirty days. | The date of the decree appealed

Sunopsis

- 1. Legislative changes.
- 2. Scope of the Article.
- 3. Starting point.
- 4. Applicability of Section 5 of the Limitation Act to applications under this Article.
- 5. Extension of time under Section 6.
- 6. Power to grant time for payment of court-fee.

Act of 1877

Substantially same as above Act of 1871

162 -For leave to appeal as a | Nanety days. | The date of the decree appealed against pauper Act of 1859

No corresponding provision

Note 3

1 (1933) A I R 1933 Lah 882 (683) 147 Ind Cas 268, Ghulam Hussain v. Makhan Lal

Note 4 la (1919) A I R 1919 Lah 447 (447) 1918 Pun Re No 96 47 Ind Cas 962.

Daulat Ras v. Jagat Ram 1 (1933) A I R 1933 Lah 882 (882) . 147 Ind Cas 288, Ghulam Hussam v Makhan Lal

2 (1905) 5 Cal W N 816 (S17), Shama Prosad Ghow v Take Mullik.

Article 170

Article 170 Notes 1---3

Other Topics

Leave to file cross-objections in forma pauperis—Article not applicable ... See Note 2, Pt. 5

No extension of time on equitable considerations ... See Note 2, Pt. 1
Time for copy excluded See Note 3, Pt. 2

- Legislative changes.—This Article is the same as Article 170
 of the Act of 1877, except that the word 'from' is substituted for
 'against.' It corresponds to Article 162 of the Act of 1871, but
 under that Act the period of limitation was ninety days.
- 2. Scope of the Article .- Order 44 Rule 1 of the Code of Civil Procedure provides for an application for leave to appeal as a paper. Such applications would be governed by this Article. The Court cannot extend the time for filing such applications on any equitable considerations.1 Where an appeal is filed in time but with insufficient court-fee and, subsequently, after the expire of the period prescribed by this Article, the Court calls upon the appellant to furnish additional stamp fee and the appellant thereupon applies to the Court for leave to continue the appeal in forma pauperis, it is clear that the application is barred under this Article.2 In Muhadev Balcant v. Lakshman Balvant,3 their Lordships of the Bombay High Court observed that if such applications were allowed after the period prescribed by this Article, the result would be to extend the period allowed by the Article for the benefit of an appellant who has put in insufficient stamps and then applies to appeal in forma pauperis. Where an appeal was filed against the preliminary decree on payment of proper court-fee, but the Appellate Court converted the same into an appeal against the final decree, which had been subsequently passed, and called upon the appellant to furnish additional stamp, and thereupon the appellant applied for leave to appeal in forma pauperis, it was observed by the High Court of Madras that such an application would be governed by Article 181.4

The Article applies only to applications for leave to appeal in forma pauperis and not to applications for leave to file cross-objections in forma pauperis in an appeal.⁸

3. Starting point.—Time, under this Article, runs from the date of the decree. And the period of limitation is thirty days, even though the period of limitation for the appeal itself might be ninety

Article 170 - Note 2

¹ See Note 3 to Section 3 ante

^{2 (1915)} A I R 1915 All 310 (311) - 29 Ind C1s 1003, Gate v. Rachla Kunwar. (1894) 19 Pom 48 (50), Mahader Balvant v. Lakshman Balvant.

^{3 (1891) 19} Bom 48 (50).

^{4 (1920)} A I R 1920 Mad 230 (231): 54 Ind Cas 761, Solasyappa Chetty v. Lakshmanan Chetty

 ^{(1910) 7} Ind Cus 118 (122): 15 Cal W N 205. 12 Cal L Jour 173, Gobinda Rang Dan v Radha Pallabh Dag.

⁽¹⁹²⁹⁾ A I R 1929 Pat 31 (32): 119 Ind Cas 900 · 7 Pat 827, Mt. Chander Kala Kuer v. Mt. Dulhin Pata Kuer.

days, as in the case of an appeal to the High Court. The time requisite for the copy of the decree obtained should be excluded under the provisions of Section 12 ante. See Notes to Section 12 and the undermentoned case.

Article 170 Notes 3-6

- Applicability of Section 5 of the Limitation Act to applications under this Article.—See Notes 1 and 29 to Section 5 ante, and the undermentioned case 1
- 5. Extension of time under Section 6.—Section 6, ante, does not apply to applications to file an appeal in forma paupers and consequently, even an application by the next friend of a minor must be within the time allowed by this Article.¹
- 6. Power to grant time for payment of court-fee. The rejection of an application for leave to appeal as a puper does not ipso facto carry with it the rejection of the memorandum of appeal filed along with it. The memorandum of appeal is a separate document before the Court which remains for disposal after the rejection of the application, and the Court has power under Section 149 of the Cruil Procedure Code to give further time for the payment of the requisite court fee stamp and admit the appeal? The memorandum of appeal, though originally instamped, is not a nullity and can be validated with effect from the date of the presentation, by the

Note 3

- 1, (1890) 12 All 79 (93) , 1890 All W N 25, Parbats v. Bhola,
- 2 (1890) 12 All 79 (93, 95) 1890 All W N 25, Parbats v. Bhola.

Note 4

1 (1910) 7 Ind Cas 944 (944, 945) 34 Bom 589, Chintaman Fyankatarao v. Ramchandra Vyankatrao.

Note 5

 (1909) 4 Ind Cas 1002 (1003) (Lah), Seia Datt Pershad v Collector of Lahore

- 1 (1918) A I R 1918 Mad 1039 (1040) 40 Mad 687 ,38 Ind Cas 617, Nella-tadieu Ainmal v. Subramania Pellas.
 - (1935) A I R 1935 All C20 (C25) 157 Ind Cas 347 57 All 983 (FB), Mt. Shahzadi Begam v. Alakh Nath
 - (1918) A I R 1918 All 194 (194) 40 All 381. 45 Ind Cas 29, Muhammad Farzand Alı v. Rahat Alı
 - (1931) A I R 1931 Rang 131 (134) 9 Rang 92 . 132 Ind Cas 707, Maung San Shue v Hay ko Ishaq (But see (1919) 18 Ind Cas 518 (518) (Low Bur), Ma Wa Tha v. Abdul
 - (But see (1913) 18 Ind Cas 518 (518) (Low Bur), Mg Wa Tha v. Abdu Gant Osman.)
- (1925) A I R 1925 Pat 442 (443) 4 Pat 67 91 Ind Cas 814, Rajendia Prasad v Gopal Prasad
 - (1898) 22 Bom 849 (857, 861), Bas Ful v. Desas Manorbhas Bhasanidas (1897) 21 Bom 576 (579), Jumnabas v. Vissondas Ention Chand
 - (1909) 4 Ind Cas 896 (897) 1909 Pun Re No. 94, Hars Singh & Gurbalhsh. Singh.
 - (1926) A I R 1926 Oudh 13 (14) 90 Ind Cas 371, Sajjad Als Khan v. Jagmohan Das.
 - (1906) 26 All 329 (331) * 1904 All W N 24, Gerwarlal v Lakshou Narain (See (1935) A I R 1935 Pesh 22 (23). 154 Ind Cas 943, Telaya Ram v. Ghansan Das]

Article 170 Note 6

payment of the court-fee.3 The Appellate Court can also, in a fit case, excuse the delay under Section 5 of the Limitation Act and admit the appeal after the expiry of the limitation, on payment of the full court-fee.4 But where the application for leave to appeal as a nauner is itself filed after the period of limitation has expired, the subsequent payment of court-fee will not validate the appeal under any circumstances.

Artiole 171

171 * Under the Code | Sixty days. of Civil Procedure, 1908. for an order to set aside an abatement.

The date of the abatement.

Sunopsis

- 1. Legislative changes.
- 2. Scope.
- 3. Starting point.
 - 4. Applicability of Section 5 to applications governed by this Article.
- 1. Legislative changes. See Note 1 to Article 172. infra.
- Scope. Under Order 22 of the Code of Civil Procedure, a suit may abate :
 - 1, where the plaintiff or defendant dies and the right to sue does not survive, or
 - 2. where the plaintiff or defendant dies and the right to sue survices, but no application is made within the time

Act of 1877 See under Article 172, infra.

[But see (1935) A I R 1935 Rang 836 (939) : 13 Rang 50 : 159 Ind Cas 468, Vertannes v. Lawson.]

- 8. (1922) A I R 1922 Lab 225 (226) : 8 Lab 35 : 65 Ind Cas 741. Dival Day v. Sundar Das.
- (1916) A I R 1916 Low Bur 124 (124): 32 Ind Cas 630, Sucan Tes v. Ma
 - [But see (1916) A I R 1916 Low Bur 58 (59); 82 Ind Cas 531.
 - Shanghai Lofe Insurance Co. Ltd. v. Helen Constance Brown. [1914] 22 Ind Cas 884 (881, 885) : 7 Low But Ral 90, Anamally v. O. M. M. R. M. Chetty Firm.
 - (1929) 115 Ind Cas 678 (678-679) (Pat), Rajendra Prasad v. Gopal Prasad.
 - (1891) 13 All 805 (309) : 1891 All W N 99, Dishnath Prasad v. Jagarnath Prasad. (1932) AI R 1932 Oudh 848 (344): 140 Ind Cas 190, Mt. Rasyasulnissa
- Degam v. Mt Athars Begam] 4. (1928) A I R 1928 All 499 (499); III Ind Cas 655, Ram Charan v. Dansi-
- dhar. 5. (1904) 26 All 329 (930, 331) : 1904 All W N 24, Girwarlal v. Lalihmi
- Narain. (1899) 26 Cal 925 (928), Durga Charan Nashar v. Doolhiram Nashar.

[See (1933) A I R 1933 All 809 (309) ; 144 Ind Cas 79, Mt. Shahaade Bezam v. Alakh Nath. 1

limited to bring the legal representatives of the deceased party on record.

In the first case, no question of setting aside the abatement arises, inasmuch as there can be no person entitled to make any such application. In the second case, the legal representative can, under Order 22 Rule 9 sub-rule 2, apply for setting aside the abatement. Thus Article will apply to such applications.

Where an application is not for setting aside any abatement, this Article will have no application Thus, where A institutes a representatire suit on behalf of himself and on behalf of others, and dies pending the suit, any of the other persons who are constructively already parties to the suit can apply to continue the suit under the provisions of Order 1 Rules 1 and 10 of the Civil Procedure Code. independent of any question as to the applicability of Order 22 Rules 3 and 4 relating to abatement of emits. Such applications are not for setting aside any abatement and are not governed by this Article. In the undermentioned case, A, the nearest reversioner, sued to set aside a widow's alienation and died pending suit. The Court declared suo motu that the suit abated The next reversioner thereafter applied under Order 22 Rule 9 of the Code of Civil Procedure for setting aside the abatement. It was held that the application could be treated as one under Order 1 Rule 1 of the Civil Procedure Code to continue the suit, and would be governed by Article 181 of the Limitation Act.

See also Notes to Article 172, enfra.

Article 171 - Note 2

- 1 (1931) A I R 1931 Lah 79 (80) . 191 Ind Cas 98 12 Lah 275, Lachhman v Bans: Lai.
- (1915) A I R 1915 P C 124 (126, 127): 88 Mad 406: 42 Ind App 125: 29
 Ind Cas 298 (P C), Venkalanarayana Pilla: v. Subbammal.
 - (1931) A I R 1931 Lah 79 (80): 131 Ind Cas 98: 12 Lah 275, Lachhman v. Banss Lal.
 - (1917) A I R 1917 Mad 389 (390); 34 Ind Cas 384; 40 Mad 110, Paramesuaram v. Narayanam. (Dissented from A I R 1915 All 59.)
 (1925) A I R 1925 Mad 244 (244). 85 Ind Cas 656, Gulam Gouse v. Dost
 - (1925) A I R 1925 Mad 244 (244) . 85 Ind Cas 666, Gulam Gouse v. Dos Md. Khan.
 - (1931) A 1 R 1931 Mad 590 (591): 132 Ind Cas 299: 54 Mad 770, Mahomed Kanni Routher v. Nama Mahomed Routher.
 - [See also (1921) A I R 1921 P O 123 (124): 48 Cal 493: 48 Lod App -1 Yl Nag L R 37: 62 Ind Cost 737 (P O), Rage Annal Rico v. Ramdas Dadutans. (A sunt under S 92 Cv. Pro. Code, 1903 (S. 59), Cv. Pro. Code, 1859) Gos: not absto; it lenng a sunt which is not presented by any midivalues for their own interest, tut as representatives of the general public.)
 - [1917] A I R 1917 Mad 389 (390): 40 Mad 110: 34 Ind Cas 384.
 Paramesu aram v. Karaganan. (Sust under S 92 of the Civ.
 Pro Code, 1s a representative suit.)
- (1917) A 1 R 1917 Mad SS9 (390): 34 Ind Cat 384: 40 Mad 110, Paramesicaram v. Narayanan.
 - (1931) A 1 R 1931 Mad 590 (591) 132 Ind Cas 289: 54 Mad 770, Md. Kanns Routher v. Nama Mahomed Routher. (Article 181 would apply.)
- 4. (1919) A 1 R 1919 Mad 479 (480): 49 Ind Cas 268, Krishnaswamy Iyer v. Seethalakshmi Ammal

Article 171 Note 3 3. Starting point.—The terminus a quo under this Article is the date of the abatement. Under the Code of Civil Procedure of 1882, an order of abatement had to be passed by the Court, before the suit could be considered as abated. Under the present Code, an abatement takes place automatically when legal representatives of the deceased are not brought on record within the prescribed time and no formal order is necessary. In Therefore, an application for setting asade an abatement must be made within the period of sixty days from the actual abatement and not from the passing of an order declaring the abatement. An application for substitution may, in substance, be treated as an application to set saids abatement. If but substance, be treated as an application to set saids abatement.

Note 2

- I. See (1885) 9 Bom 275 (278, 279), Fultahu v. Goculdas Valabhadas. (1901) 9 Cal W N 369 (370), Ram Proton v. Lal Chand.
- 1a (1924) A I R 1924 Lah 424 (424) : 74 Ind Cas 17, Badlu v Mt Narains 2. (1926) A I R 1926 All 217 (220) : 93 Ind Cas 313 : 48 All 334 (F B).
 - Churya v. Baneshrar. (1911) 11 Ind Cas 550 (560): 35 Bom 393, Lakhmichand Fewachand v. Kachubhai Gulabchand. (In this case, even though the application
 - under the Article was barred, the Court added the applicant as a party to the suit under its power auder Order I Rule ID, O. P. C.) (1915) A I R 1915 Lah 382 (383) : 81 Ind Cas 607, Bhans Ram v. Narain
 - (1915) A. I. R. 1915. Lah. 392 (333): 31 Ind Cas 607, Bhani Rom v. Narain. Singh. (An application abound be made within sixty days from the date of the abatement.). [See also (1919) A. I. R. 1919. Cal. 294 (295): 51 Ind. Cas 534, Priya Sundars v. Gelopale Skell. (Abatement order passed before
 - Sundar v. Goland Sheil. (Abatement order passed before expiry of aix months—Application for setting aside order within sixty days of order is maintainable)]
 - [But see (1922) A I R 1922 All 209 (210) : 66 Ind Cas 554 : 44 All 459, ML Gujrats v. Sital Missr.
 - (1930) A I R 1930 All 379 (380): 127 Ind Cas 419, Tulti Ram v. Municipal Board, Shahjahangur. (But this automatic abatement does not follow where party dues before conclusion of hearing)
 - (1920) A I R 1920 All 294 (285) 42 All 510 : 59 Ind Cas 903, Lachmi Naram v. Mohammad Yasuf. (The absence of any order of abstencent does not serve as an obstacle to the making af an application for substitution of name which is in effect an application to set aske the order of abstement).
 - (1926) A I R 1926 Ich 234 (235): 7 Ich 73: 94 Ind Cas 422, Qaim **T. Nura.
 - (1937) A I R 1937 Nag 88 (89): 169 Ind Cas 853, Harssa Ralansa v. Janu. (Application to set aude abatement within sixty days of abatement is proper and not premature even if made before order of Court that suit has abated)
 - (1933) A I R 1933 Lah 356 (359): 14 Lah 543: 142 Ind Cas 649, Chuns Lai Tules Ram v. Amm Chand]
- 3. (1928) A I R 1928 Lah 746 (747): 12 Ind Cas 5, Kerpa Ram v. Bhagat Chand.
 - (1920) A I R 1920 All 284 (285): 42 All 510: 59 Ind Cas 903, Lachmi Naram v. Mohammad Fusuf,
 - (1924) A I R 1924 Lah 424 (424) : 74 Ind Cas 17, Badlu v. Mt. Naraini.
 - (1927) A I R 1927 Oudh 221 (221): 2 Luck 592: 101 Ind Cas 841, Khalil Ahmad Khan y Khatir Zaman.
- (1930) A I R 1930 Cal 422 (424): 57 Cal 149: 124 Ind Cas 817, Janahmath Sungha v. Narodbaran Ray (Held, in the circumstances of the case that the application for substitution could not be treated as an application for setting aside the abstracent.)

not when the merits of the case are against the petitioner.4

· 4. Applicability of Section 5 to applications governed by this Article. - Order 22 Rulo 9 sub-rule 3 provides that the provisions of Section 5 of the Limitation Act shall apply to applications under sub-rule 2. I. c. to applications to set aside abatements

As to what is "sufficient cause" within the meaning of Section 5 ante, see Notes to that Section.

As to what is "sufficient cause" within the meaning of Order 22 Rule 9 sub-rule 2 of the Civil Procedure Code, see the Anthors' Commentaries on the Civil Procedure Code, Order 22 Rule 9, Note 8

See also the undermentioned cases.1

172. Under the same Sixty days. The date of Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.

Article 172 the order of dismissal.

Article 174 Notes

3-4

Sunopsis

- Legislative changes.
- 2. Scope and applicability.
- 3. Starting point.

Act of 1877

171 -Under section 371 of the Code of Civil | Sixty days | The date of Procedure, or under that section and section 582 of the same Code, for an order to set aside an order for abatement or dismissal.

the order for abatement or dismissal

Acts of 1871 and 1859 No corresponding provision

(1937) A I R 1937 Lah 455 (457) 174 Ind Cas 700, Diwan Chand Nirmal v Bhaquan Chand

(See (1929) A I R 1929 Lah 634 (635) 119 Ind Cas 759, Raghunath Rai v Radha Kishan Panna Lal)

4 (1924) A I R 1924 Mad 713 (714) 80 Ind Cas 397, Seshamma v Venkala

(1930) A I R 1930 Cal 422 (424) 57 Cal 149 124 Ind Cas 817, Janal math Sungha . Nurodbaran Ray

Note 4

1. (1928) A I R 1928 Mad 401 (405) 108 Ind Cas 288, Ramachandran v

(1924)

(1938) A I R 1938 Mad 218 (218) 1 L R (1938) Mad 275 174 Ind Cas 951, Secretary of State v histomacharpulus (Ignorance of death of respondent in absence of negligence is sufficient cause to excuse delay in seeking to set aside abatement)

Article 172 Notee 1-2

1. Legislative changes.

- 1. There was no Article corresponding to this in the Act of 1871.
- Article 171 of the Act of 1877 as substituted by Act VII of 1888 contained the provisions of the present Articles 171 and 172 in a combined form.
- 3. An application to set aside an abatement is separately provided for by Article 171, and this Article provides only for an application by an assignee or receiver of an insolvent plaintiff or appellant to set aside the dismissal of a suit or an appeal.
- 2. Scope and applicability. Under the provisions of the Civil Procedure Code, Order 22 Rules 3 and 4, where a party to a suit dies, there can be no dismissal of the suit but only an abatement. In the case of the insolvency of the plaintiff, Order 22 Rule 8 provides that the insolvency of a plaintiff shall not cause the suit to abate "insless the receiver or sssigned declines to continue the suit or (unless for any special reason the Court otherwise directs) to give security for the costs thereof within such time as the Court may direct." Sub-rule 2 of that Rule provides that where such assignee or receiver neglects or refuses to continue the suit and to give security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's insolvency and the Court may make an order accordingly.

There is a conflict of opinion as to whether there can be an abstract in the case of the insolvency of the plaintiff. On the one hand it has been held by the High Court of Labore that when the receiver or assignee declines to continue the suit, the suit will abute even without an appheation by the defendant for dismissal of the suit under sub-rule 2. The High Courts of Allababad, Madras, Calcutta and Bombay are of the view that there is no abatement in such cases, and the suit will be pending as long as it is not dismissed under sub-rule 2.

Order 22 Rule 9 sub-rule 2 provides that where a suit bas abated or has been dismissed, "the plaintiff or the person claiming to be the legal representative of a deceased plaintiff or the assignee

(1915) A I R 1915 Mad 183 (193): 26 Ind Cas 472, Kandasom: Chetti v. Murugappa Chetti. (That the plaintiff was ill-advised is not a sufficient cause to excuse delay.)

Articla 172 - Note 2

- 1. (1928) A 1 R 1926 Lah 595 (596, 597) * 110 Ind Cas 910 : 10 Lah 209, Mulchand Ganga Bashen v. R. M. Downie & Co.
- (1922) A I R 1922 All 361 (362): 43 All 621: 64 Ind Cas 52, Khunni Lal v. Rameshar.
- (1920) A I R 1920 Mad 738 (788): 61 Ind G 13 300, O ficial Assignee, Rangoon T. Chadambaram Chetty.
 (1927) A IR 1927 Cal To (717: 98 Ind Can 781: 53 Cal 844, Kissen Gopal
- Karnan, v. Suklal Karnanı. 5. (1892) 16 Bom 404 (406, 407), Lehhraj Chunslal v. Shamlal Narrondas.
- (1892) 16 Bom 404 (406, 407). Lehhraj Chunslal v. Shamlal Narrondat.
 (1875) 12 Bom H C R 257 (261), Ibrahim Mahsin v. Abdul Rahiman Ali.

or the receiver in the case of an insolvent plaintiff may apply for an order to set aside the abatement or dismissal."

Article 172 Notes 2-3

Order 22 Rule 11 of the Civil Procedure Code provides that the word "suit" in that Order includes an appeal, Consequently, Rules 8 and 9 would apply to appeals also

This Article applies only to an application by the assignce or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or appeal. In other words, it applies to an order under suh-rule 2 of Rule 9 of Order 22 to set aside a dismissal under Rule 8. Article 171 ante applies to applications to set aside abatements.

The Article only applies to applications by the receiver or assignee of an insolvent plaintiff or appellant and bence does not apply to the case of an insolvent defendant or respondent. For the procedure in the case of a defendant becoming insolvent, see the undermentioned case 6

3. Starting point .- Time runs from the date of the order of dismissal. Under sub-rule 3 of Order 22 Rule 9 of the Civil Procedure Code the provisions of Section 5 of this Act have been made applicable to applications under Order 22 Rule 9 sub-rule 2. i. e. to applications contemplated by this Article.

173.* For a re- | Ninety days. | The date of the view of judgment except in the cases for bv provided article 161 and article 162.

Article 173 decree or order.

Synopsis

- 1. Legislative changes.
- 2. Scope and applicability.
 - 3. "Review."
- 4. Applicability of Sections 5 and 12 of the Act to applications for review.
 - 5. Starting point.
 - 6. Court-fee and limitation.

Act of 1877 Substautially same as above.

Act of 1871 164 For a review of judgment | Kinety days | The date of the decree. Act of 1859

No corresponding provision

6 (1927) A I R 1927 Mad 693 (694, 695) 102 Ind Cas 444, Kaliaperumal v. Ramchandra Ayvar.

Article 173 Notes 1-5

- 1. Legislative changes.—In Act IX of 1871, this Article appeared a tricle 164 and embraced nil kinds of review as there was no provision corresponding to Articles 161 and 162 of the present Act. The Article appeared in its present form as Article 173 in Act XV of 1877, the only difference being that Article 161 was numbered Article 160A.
- 2. Scope and applicability.—This Article prescribes the period of initiation for all applications for review other than those specifically dealt with by Articles 161 and 162 ante. It is however only where an application is made for review that this Article would apply. No question ol limitation would arise where a review is made by the Court under its intherent powers.¹

See also Note 2 to Article 162, ante

3. "Review." -- See also Noto 3 to Article 162, ante.

A review must, on the one hand, he distinguished from an amendment of a clerical error and on the other, from an appeal. The object of a review is to alter the decision of the Court, while the object of an amendment by correction of clerical error is to make the judgment or decreo read what it was intended to read.

A review is distinguishable from an appeal in that the primary intention of a review is the reconsideration of the matter by the same Judge under certain conditions, while an appeal is a re-hearing by another trihunal.²

As to other points of distinction between a review and an amendment or an appeal, and also as to the circumstances under which and the cases in which a review will lie, see the Notes in the Authors' Commentaries on the Civil Procedure Code, Order 47 Rules I and 7.

4. Applicability of Sections 5 and 12 of the Act to applications for review. — Sec Notes to Sections 5 and 12, ante.

 Starting point.—Time under this Article runs from "date of the decree or order." (For meaning of the words "date of the decree." see Note 5 to Article 156 ante.) Order 20 Rule 7. Civil Pro. Code.

Article 173 — Note 2

1 (1918) A I R 1918 AH 229 (230): 48 Ind Cas 490: 40 AH 68, Khurshed Alam Khan v. Rahmat Ullah Khan.

[See also (1924) A I R 1924 Pat 673 (677): 3 Pat 930: 80 Ind Cas 667, Mani Lal v Durga Prasad]

Note 3

See (1870) 19 Suth W B 33 (33), Assur Ali v. Woolfulconista. (But a petition
for the rectification of a decree is not different from an application for
a review when the object of the rectification is to after the decision of
the Court)

(1869) 12 Suth W R 65 (66), Modhoo Soodun Ghove v. Romanath Ghose. (An application for review and an application for an alteration of a clerical error in a decree have not the same period of limitation.)

2. (1965) 3 Suth W R D Classian 401 T Breat The time 000 . 1 C 46her 905 . 1 Sat 645 (P)

(1868) 9 Suth Chucke provides that the decree shall bear date the day on which the judgment was pronounced. It follows that time runs from the date the judgment sought to be reviewed was pronounced. The fact that some other proceedings in relation to the decree or order have terminated at a later date³ or that the applicant had knowledge of the decree at a later date³ does not postpone the starting point to such date, though such facts may furnish a sufficient cause for extending the time under Section 5 of the Act.³

The mere fact that a judgment has been written will not start limitation running. It must be pronounced.⁵

Where a decree is amended, the date of the decree is not thereby altered, but an application for review based on the amendment may be allowed under Section 5 of the Act.

6. Court-fee and limitation.—By the application of Section 5 or Section 12 of the Limitation Act, an application for review may be within time even if its made after untry days. Where an application for review of judgment is filed on or after the 90th day from the date of the decree. Article 4 of Schedule 1 of the Court-fees Act provides that it should be chargeable with the full fee leviable on the plaint or memorandum of appeal Otherwise, under Article 5 of that Act only half the fee is leviable.

But the Court-fees Act cannot enable a party to apply for a review beyond the period of limitation reckoned according to law, merely by reason of the fact that he has paid a full court-fee. Thus, where ninety days from the date of the decree have expired, and time is not extended by the application of S 5 or S 12 of the Act, no application for review will he, even though the full court-fee leviable on the plaint is paid. The reason is that the Court-fees Act cannot

Note 5

- 1 (1884) 1884 All W N 880 (330), Kubber Singh v Fatch Singh
- 2 (1884) 1884 All W N 330 (330), Kubber Singh v Fatch Singh
- 3 (1929) A I R 1929 All 545 (547) 119 Ind Cas 99, Debi Dayal v Ambika Prasad
 - (1929) A I R 1929 All 485 (488) I21 Ind Cas 552, Baldeo Prazad Shuhul v. Sukhdeo Prazad Shuhul.
- 4 (1929) A I R 1929 All 485 (488) I21 Ind Cas 552, Baldeo Prasad v Sukhdeo Prasad
- 5 (1923) A I R 1923 Pat 129 (180) 1 Pat 771 75 Ind Cts 579, Sagarmal Marican v Lachmisuran Misir
- 6 (1920) A I R 1920 Pat 622 (626, 630) 5 Pat L Jour 472 57 Ind Cas 236 (FB), Golab v Janki Kuer
 - (1917) A I R 1917 Low Pur 162 (163) S5 Ind Cas 347, Wor Lone v G. Rainey
 - (1899) 22 Mid 364 (367), Parameshraya v Seshaqiriappa
 - (1923) A I R 1923 All 22 (22) 69 Ind Cas 199, Ram Chandar V Jan Mal [But see (1915) A I R 1915 Nag 37 (39) 29 Ind Cus 589 11 Nag L R 92, Dinaja V. Larman.
 - (1875) 23 Suth W R 433 (431), Bulobhuddur Mahantee v Mudhoosoodun Pandey (Submitted not correct)]

Article 173 Nutes 5-6

Article 173 Note 6

nffect the period of limitation prescribed by this Act. Nor, on the other hand, will Article fi of the Court-fees Act entitle a party to pay only half the fee on the ground that the application is not barred by limitation, if actually it has been made on or after the 90th day from the date of the decree.

Section 28 of the Court-fees Act provides that where a document is, through mistake or inadvertence received, filed or used in any office without being properly stamped, the presiding Judge or the head of the office, as the case may be, may, if he thinks fit, order that the document should be stamped as he may direct; and on such document being stamped accordingly, the same and every proceeding thereto shall be as valid as if it had been properly stamped in the first instance. Under Section 149 of the Civil Procedure Code. where a document is presented in time with insufficient stamp, the Court may allow the deficiency to be paid and on such payment the document will have the same force as if such fee had been paid in the first instance. In the undermentioned case, where an application was presented with insufficient etamp but there was no mistake or inadvertence and the deficiency was made up only after the expiry of the period of limitation, it was held that Section 28 of the Courtfees Act did not apply and that the application was barred. Section 149 of the Civil Procedure Code was not adverted to. It must be nssumed that their Lordships did not intend to oxercise their discretion in favour of the applicant under Section 149 of the Code.

Article 174

174.* For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.

* Act of 1877

173-A. — For the issue of a notice under section 23s of the same Code, to shew cause why the payment or adjustment therein mentioned should not be recorded as certified.

ays. When the payment or adjustment is made.

Acts of 1871 and 1859 No corresponding provision.

Note 6

1. (1918) A I R 1916 Au 229 (230) 43 Ind Cas 490 : 40 All 68, Khurshed Alam

Bhutnath r, the 89th

Article 174-Notes 1-2

Synopsis

- 1. Legislative changes.
- 2. Scope and applicability,
- 3. Certification by decree-holder.
- 4. Application must be made by judgment-debtor.
- 5, "Adjustment", meaning of.
- 6. Starting point,
- 7. Effect of fraud.
- 8. Effect of bar.

Other Topics

Applications under Insolvency Acts.—Article not applicable ... See Note 2, Pts. 13
'Judgment-debtor', meaning of See Note 4, Pts. 1, 2
Payment not by judgment-debtor but by stranger — Article not applicable See Note 2, Pt. 10

Period not to be extended or altered by consent or agreement. See Note 9, Pt 1a
Pre-decree arrangement—Article not applicable ... See Note 2, Pts. 11, 12

 Legislative changes. — This Article corresponds to Article 173 A of Act XV of 1877. Before Act XII of 1879, the corresponding Article in the 1877 Act was Article 161 which allowed only a short period of twenty days

The first column of Article 173A ran as follows: — "For the issue of a notice under section 258 of the same Code, to shew causs why the payment or adjustment therein mentioned should not be recorded as certified." The Madras High Court held that Section 258 of the Ciril Procedure Code and Article 173 A applied only to decrees under which money was payable and not to decrees for possession of immovable properties. In the Act of 1908, the matter was made clear by substituting Article 173 for Article 173 as

The words "Ninety days" in Column 2 were substituted for the word "Ditto" by Section 2 and Schedule 1 of the Repealing and Amending Act. 1923

2. Scope and applicability. — This Attale refers to an application by a judgment-debtor under Order 21 Rule 2 sub-rule 2 of the Civil Procedure Code ¹³ Under sub-rule 1 of the Rule, where any money physhle under a decree of any kind is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, a duty is east on him to certify such payment

Article 174 - Note 1

 (1898) 22 Mad 182 (185) 6 Mad L Jour 175, Sankaran Nambias v Kanara Kurup.
 Note 2

1a(1938) A I R 1938 Rang 828 (329), Chokalingam Chettyar v. Narayat a Chettyar.

Lim. 150

Article 174 Note 2

or adjustment to the Conrt whose duty it is to execute the decree. Sub-rule 2 contemplates an application by the judgment-debtor to the Court to issue a notice to the decree-holder to show cause why such payment or adjustment should not be recorded as certified. It thus affords protection to the judgment-debtor in the event of the failure of the decree-holder to act under sub-rule 1 and involves a judicial decision by the Court whether the payment should be Lecorded.

Under the old Civil Procedure Code, it was held by the Calcutta High Court and the Chief Court of the Punjabs that Section 258 (corresponding to Order 21 Rule 2 of the present Code) applied to any kind of decree and not merely to money decrees. The Madras High Court4 held that the Section was limited to decrees under which money was payable and did not apply to other kinds of decrees and that Article 173 A (Article 174 of the present Act) did not apply to an application by the judgment-debtor. Under the present Code of Civil Procedure, it has been held by the High Courts of Bombays and Calcuttae that the addition of the words "of any kind" in subrule I makes it clear that the Rule applies to every kind of decree. But, according to the Madras High Court, the change does not render the Rule applicable to all kinds of decrees and the Rule applies only to cases where money is payable under the decree, whether they are accompanied by other reliefs or not. See also the decision of the Privy Council in Dorothy Margaret v. Henry Peter, 74 which was a case under Section 349 of the Ceylon Civil Procedure Code, eimilar to Order 21 Rule 2 of the Code of Civil Procedure except that it does not contain the words "of any kind."

rim Als. Dalla. 16. Mt.

^{1. (1929)} A I R 1929 P C 19 (22) . 114 Ind Cas 581 : 3 Luck 684 : 56 Ind App 30 (PC), Shr: Prohash Singh v. Allahabad Bank Ltd.

^{2. (1881) 6} Cal 786 (788) . 8 Cal L R 86, Baba Mohamed v. Webb

^{3, (1906) 1906} Pun Re No 44 (at p. 158) : 1907 Pun L R No. 82 : 1906 Pun W R 81, Lachu v. Kishen Lal.

^{4. (1899) 22} Mad 162 (164) . 8 Mad L Jour 175, Sankaran Nambiar v Kanara Kurup (Decree for possession of immovable property.) 5. (1922) AI R 1922 Bom 380 (381) · 46 Bom 226 64 Ind Cas 490, E. Enas

Patloo Gharry v K. Phillip Gowrya.

 ⁽¹⁹²⁸⁾ A I R 1929 Cal 715 (717): 117 Ind Cas 833, Numat v. Jalil.

^{7. (1926)} A I R 1926 Mad 749 (751) : 49 Mad 716 : 95 Ind Cas 731, Narayanaswamy v. Rangaswamy. (1914) A I R 1914 Mad 360 (360) : 23 Ind Cas 530. Abdul Latiff Sahib v.

Bathula Bibs Ammal.

⁽¹⁹¹⁸⁾ A I R 1910 Mad 751 (754) · 40 Ind Cas 020, Sethurama Sahib v. Chotta Rajah Sahib.

⁽¹⁹²⁰⁾ A I R 1920 Mad 469 (470): 43 Mad 476: 56 Ind Cas 289, Ramakrishna Rao v Balakrishna Rao.

This Article is applicable only to an application under Order 21 Rulo 2 sub-rule 2, by the judgment-debtor. It is not applicable to certification by the decree-holder.

Article 174 Notes 2—3

Order 21 Rule 2 of the Code has been held to apply only to the case of parties who stand in the relation of judgment-debtor and judgment-creditor at the date of the transaction? This Article may not therefore apply if the payment is not by the judgment-debtor but by a stranger. But there is nothing in the Rule to limit the payment to the decree-bolder only ¹⁹

Order 21 Rule 2 relates to an adjustment subsequent to the decree and not to a pre-decree arrangement. Thus, it does not apply to an adjustment made or agreement entered into after the date of the decree of the Court of first instance but hefore the date of the appellate decree damnssing the appeal. If Similarly, an application to record an alleged agreement not to execute the decree entered into prior to the passing of the decree cannot be entertained under this Rule and Article 174 will not covern such an application 15

The Article is not intended to apply to applications made under the Insolvency Acts, masmuch as those Acts are intended to be complete Codes of the insolvency law applicable to the areas to which they apply and prescribe their own periods of limitation.¹⁵

The Article does not apply to adjustments made out of Court hetween the dates of the proluminary and final decrees for sale 14

- 3. Certification by decree-holder.—There is no specific Article in the Limitation Act for certification by the decree-holder under Order 21 Rule 2 sub-rule 1 of the Code of Civil Procedure This Article does not govern such certification. Nor doos Article 181 apply to the case, inasmuch as such certification has been held not to
 - 8 (1929) A I R 1929 P O 19 (22) 3 Lack 684 114 Ind Cas 581 56 Ind App 30 (P C), Shr: Prokash Singh v. Allahabad Bank Ltd
 - (1922) A I R 1922 Cal 30 (31): 68 Ind Cas 780, Bals Mahomed Sahas v. Ajanmas
 - (1935) A I R 1935 Lah 194 (195) : 15 Lah 910 . 155 Ind Cas 315, Sundar Das Vir Bhan v Bishen Das
 - 9 (1911) 35 Mad 659 (665) 12 Iud Cas 657 (661), Ponnusamy Nadar v. Letchmanan Chettuar (Per Suudara Iyer, J.)
 - (1895) 19 Mad 230 (232) 5 Mad L Jour 218, Rama Ayyan v Sreennasa Pattar.
- 10. (1923) A I R 1923 All 271 (271) 71 Ind Cas 457 45 All 304, Mahadeo Pranad v Mf Hammlen, (Where a compromise dectee directed the payment of money to a third person and the payment was not certified to the Court, held, it could not be rehed upon in execution.)
- (1923) A I R 1923 Mad 619 (620) . 72 Ind Cas 836, Ramanathan Chettiar v Venhatachellam.
- 12 (1928) A I R 1928 Rung 86 (37) 107 Ind Cas 860 5 Rung 685, M E. Moolla & Sons Lid V. Charterel Bank of India, Australia & China
- 13 (1927) A I R 1927 Rang 263 (264) 5 Rang 394 101 Ind C13 816, Jhan Bahadur Singh v. Baileff, Dist Court, Toungoo
- 14 (1930) A I R 1930 Mad 105 (107) 120 Ind Cas 72, Rasin Chettiar v. Ringayan Chettiar.

Article 174 Notes 3—4

be an application at all. But a certification made after the decree is time-barred will not save limitation.

4. Application must be made by judgment-debtor. — The application for issue of notice contemplated by this Article is to be made by the judgment-debtor. The word judgment-debtor includes persons claiming through him or in his right. Thus, a transferce of the equity of redemption in the property in suit from the judgment-debtor is judgment-debtor within the meaning of Order 21 Rule 2 of the Code of Civil Procedure. It has also been held that a surety for a judgment-debtor can plead an uncertified payment or adjustment made by him.²

The information given to the executing Court in a written statement put in by the judgment-debtor in answer to an application

Note 3

- (1929) A I R 1929 P C 19 (23): 56 Ind App 20: 114 Ind C₃₅ 581: 3 Luck 684 (P C), Shri Prohash Singh v. Allahabad Bank Lid.
 - (1928) A I R 1928 All 629 (631): 112 Ind Cas 73: 51 All 237 (F B), Join
 - Prasad v. Srichand. (1930) A I R 1930 All 123 (124): 124 Ind Cas 22, Ram Sarup v. Muhammad
 - Ubasdulla Khan.
 - (1931) A I R 1931 AN 219 (221): 132 Ind Cas 425, Joti Prasadv. Baru Singh. (1921) A I R 1921 Bom 411 (412): 45 Bom 91: 59 Ind Cas 399, Pandurang

 - Sanyal v. Ekagendranath Sanyal.
 - (1912) 17 Ind Cas 617 (618) (Mad), Dharani Mudalı v. Meenamba Bai. (1915) A I R 1915 Cal 235 (236) : 27 Ind Cas 11, Lahhi Narain v. Felamanı
 - Dass.
 (1919) A I R 1919 Cal 181 (182): 50 Ind Cas 242, Bahuballav Roy v. Jogesh
- Chandra (1930) A I R 1930 Rang 64 (65): 126 Ind Cas 540, Maung Tun Hlaing v. U
- Aung Gyaw. (1930) A I R 1930 Rang 829 (331) 8 Rang 810 : 127 Ind Cas 600, Daw Ywst
- v U Tw. (1924) A I R 1924 Lah 676 (677) 75 Ind Cas 1029, Fattu v. Nanak Chand.
- (1916) A I R 1916 Mad 958 (959) . 31 Ind Cas 318, Rajam Iyer v. Anantha-
- rainam Asyer. (1918) A I R 1918 Mad 620 (621) : 41 Mad 251 : 41 Ind Cas 701, Masslamani
- Mudahar v. Sethusuamy Iyer. (1929) A I R 1929 Mad 811 (811): 117 Ind Cas 790, Chunaswamy Kawrayar
- v. Periathambi Butler.
- (1935) A I R 1935 Mad 982 (923): 159 Ind Cas 33, Gangayyav, Seshajiri Rao (1927) A I R 1927 Ondh 7 (11): 93 Ind Cas 353: 29 Ondh Cas 353: 1 Luck 429, Prahash Singh v, Allahabad Banh Lifd.
- (1919) A I R 1919 Pat 136 (137): 50 Ind Cas 264, Elahı Bux v. Navab Lall.
 2. (1921) A I R 1921 Cal 648 (644) · 64 Ind Cas 72, Madan Mohan Banikya v.
 - Harulal Kenda. (1924) A I R 1924 Oudh 392 (392) : 79 Ind Cas 799, Mt. Januanis Kunwar v. Mt. Mohan Des

Note 4

- 1, (1907) 20 Mad 537 (540) : 17 Mad L Jour 417 : 2 Mad L Tim 466, Panduranga Mudaliar v. Vyllslinga Reddi.
- (1926) A I R 1926 Sind 105 (107): 96 Ind Cas 234: 20 Sind L R 302, Noor Muhammed v. Dhantram.

by the decree-holder for execution of the decree is a sufficient compliance with the requirements of Order 21 Rule 2 sub.rule 2 of the Code; and where such statemont alleging adjustment is filed within ninety days of the alleged adjustment as required by this Article, the executing Court is entitled to go into the matter and certify it. This is the twee held by the Bombay, 3 Halahabad, 4 Patins and Rangoon High Courts. The Calcutta and Madma High Courts have, on the other hand, held that to treat the statement of objection as an application would be to ignore the express language of the Rule.

An application by the judgment-debtor made six months after payment, applying for deposit of the balance and attaching a receipt for the previous payment and containing an endorsement of the subsequent payment by the decree-holder's pleader, is not an application for recording and certifying the previous payment under Order 21 Rule 2 sub-rule 3 of the Code.

On dismissal for default of an application under sub-rule 2 of Order 21 Rule 2 of the Code, a fresh application by the judgmentdebtor for the same purpose is not barred and be is entitled to have an adjudication on the merits subject to any objection that may be open to the decree-holder.¹⁹

- "Adjustment," meaning of. See Note 6 below and the undermentioned case.
- 6. Starting point. The period of limitation for an application by the judgment-debtor under sub-rule 2 of Order 21 Rule 2 is ninety days from the time when the payment or adjustment is made and the parties cannot, by consent or agreement, extend or after the period ¹⁶ An application by the judgment-debtor to record satisfaction.
 - A I R 1928 Lah 61 (63) 108 Ind Cas 376, Thakar Datt v Ram Singh.
 (1935) A I R 1935 Bom 303 (804) 157 Ind Cas 646, Kalyani Dhana v. Dharamis Dhana & Co
 - 4 (1929) A I R 1929 All 79 (80) 113 Ind Cas 760, Ganga Dihat Bas v. Ram Audh.
 - (1930) A I R 1930 Pat 526 (527)
 Pat 521
 126 Iud Cas 159, Chandi Charau Y Panchanan Pandi
 (1928) A I R 1928 Raug 62 (63)
 FRang 833
 IIO Ind Cas 123, Mauna Tin
 - 5. (1928) A I R 1928 Rang 52 (63) 5 Rang 833 110 Ind Gas 123, Maung Tan v Ma M:
 - (1911) 11 Ind Cas 780 (781) (Low Bur), U Pa Thaing v Maung Ba U. 7. (1912) 13 Ind Cas 944 (945) (Cal), Bajrang Behars Lal v Lachmi Naram.
 - 8. (1912) 17 Ind Cas 752 (753) (Mad), Lodd Gaundass . Randos
 - 9 (1929) A I R 1929 All 674 (675) 115 Cas 139, Frank Cookbs v Mofusek Bank Ltd., Gorakhpur
- 10 (1931) A I R 1931 Lah 505 (505, 506) . 132 Ind Cas 206, Lakhpat Eas v. Della Mal Jamal Ras

Note 5

 (1938) A I R 1939 Rung 328 (329), Chokalungam Chettyar v Narayana Chettyar.

Note 6

1a (1938) A.I.R. 1938. Rung. 828. (330), Chokalingam Chettyar v. Narayana. Chettyar Article 174 Notes 4—6 Article 174 Notes 6-7 of a decree made hy him more than three years from the date of the decree against him will be harred, even if it may be within three months from the date of a revised decree against the defendants other than himself.¹

An "adjustment" of a decree is an agreement which extinguishes the decree as such in whole or in part, and results in a satisfaction of the whole or a portion of the decree in respect of the particular relief or reliefs granted by the decree. It cannot mean an adjustment, to give effect to the terms of which would be to create a new decree at variance with the decree under execution and which will again have to be executed. An agreement reducing the amount of the decree by reason of certain arrangements between the parties is an adjustment. Likewise, an agreement to accept a portion of the decretal amount in full satisfaction of the decree is an adjustment within Order 21 Rule 2 of the Codo and need not be reduced to writine.

Where the judgment-debtor under a mortgage decree agrees with the decree-holder that if the latter purchased the property in courtauction, the judgment-debtor would put him in possession, and he is so put in possession, time for an application by the judgment-debtor to have the adjustment recorded will commence to run only from the date when the decree-holder gets possession of the property.

An application under Order 21 Rule 2 sub-rule 2 of the Code is maintainable even before the decree is formally drawn up, inasmuch as the date of the decree is not the date on which it is reduced to writing and signed but the date on which the Court delivers judgment and expresses what the decree is.

7. Effect of fraud. — Where the judgment debtor alleges that the decree holder had fraodulently kept him from exercising his right to apply under Role 2 sub-rule 2 by promising that he would himself certify the payment or adjustment, can the judgment debtor claim an extension of time under Section 18 of the Limitation Act?

 ⁽¹⁹¹⁶⁾ A I R 1916 Mad 1010 (1011): 31 Ind Cas 917, Sambasica Iyer v. Muhammad Hussaw Rowther.

^{2. (1885) 7} All 424 (431); 1885 All W N 76, Fatch Muhammad v. Gopal Das.

^{2. [1885]} A IR 1928 Cal 527 (529): 113 Ind Cas 9, Azwur Rahman v. Altraja Choudhru.

 ⁽¹⁹²¹⁾ A I R 1921 Pat 135 (137): 6 Pat L Jour 337: 63 Ind Cas 535, Radha Kant Lal v Mt Porboti Kuer.

 ⁽¹⁹⁹⁵⁾ A I R 1995 Bom 303 (305): 157 Ind Cas 646, Kalyanji Dhana v. Dharamsi Dhana d Co

⁽¹⁹³³⁾ A I R 1933 Lah 806 (807) : 14 Lah 608 : 145 Ind Cas 924, Abdul Karım v Haham Mal Tanı Mal.

^{6 (1995)} A I R 1935 Mad 581 (582) . 158 Ind Cas 961, Raghupathirayudu v. Garapati Pichayya

^{7. (1924)} A I R 1924 Cal 1064 (1065) : 62 Ind Cas 746, Giribala Dass v. Dishwambar Haldar.

Articie 174 Note 7

It was held in an early Madras case1 and in a Bombay case2 that the Court executing the decree could override the provisions of this Article and would not allow a clear easo of frand to be condoned by the provisions of Order 21 Rule 2 of the Code. But later cases in Madras' and in Bombay' have taken a contrary view. The other Hich Courts have also taken a similar view, namely that even if fraud is imputed to the decree-holder, the Court executing the decree cannot recognize an uncertified payment, and that the judgmentdebtor cannot claim an extension of time under Section 18 of the Act.5 The reason is that Section 18 of the Limitation Act applies only to cases where a person has been fraudulently kept from the knowledge of his right to apply and does not deal with the exercise of the right to apply. Even if the decree-holder may be guilty of fraud. where the judgment debtor does not avail himself of the procedure laid down in Order 21 Rule 2 sub-rule 2 of the Code, he must be content to seek his remedy in damages or elsewhere.6 Under such circumstances, the judgment-debtor can neither override the period of limitation provided by this Article, nor secure an investigation of the very same matter and an extension of time by invoking the terms of Section 47 of the Code of Civil Procedure 7

See also Note 5 to Section 18, ante-

Note 7

- (1898) 21 Mad 856 (358), Ramayyar v. Ramayyar.
- 2. (1916) A I R 1916 Born 217 (218) . 40 Bom 333 . 33 Ind Cas 232, Hansa Godham v. Bhawa Jogam.
- 3. (1906) 29 Mad 812 (313) 16 Mad L. Jour 33. Ganapathy Tuer v. Chinna Chenga Reddi.
 - (1932) A I R 1932 Mad 372 (374) 55 Mad 720 : 137 Ind Cas 28 (F B), Subramaniyam v Ramasuams.
- (1935) A I R 1935 Mad 257 (257) . 152 Ind Cas 763, Murugappa Chettiar v. Apparoo Chettiar. 4. (1925) A I R 1925 Form 309 (310) 49 Born 548 95 Ind Cas 687 (F B),
- Mehbunissa Begum v. Mehedunnissa Begum. (See also (1922) A I R 1922 Born 890 (381) 46 Born 226 64 Ind Cas 400. E Enas Parloo Gharry v. K. Philip Gowrya]
- 5. (1912) 13 Ind Cas 424 (425) (Cal), Kutubullah Sarkar v. Durga Charan.
- (1912) 13 Ind Cas 63 (66) (Cal), Biroo Gorain v. Januarat Koer. (1923) A I R 1923 Cal 342 (343) 50 Cal 468 . 76 Ind Cas 311. Muhund Lal
- De v Banshidar Marwart. (1915) A I R 1915 Cal 73 (78) 25 Ind Cas 884, Golam Mujahar v. Goloke
- (1923) A I R 1923 Rang 103 (106) 68 Ind Cas 924, P. R. P L Chetty Firm v G Lon Pou
- (1919) A I R 1919 Upp Eur 26 (27) 52 Ind Cas 958, Maung On Myst v. Maung Shue Ps
- (1936) A I R 1936 Pat 270 (273) 162 Ind Cas 849 . 15 Pat 422. Harshar Prasad , Blubneshuars Prasad. (See also (1925) A I R 1925 Nag 374 (375) 88 Ind Cas 48, Marots v.
- Narayan 1 C. (1936) A I R 1936 Pat 270 (273) 162 Ind Cas 849 15 Pat 422, Harshar Prasad . Bhubeneshtears Prasad.
- 7. (1938) A I R 1938 Pat 405 (466) 17 Pat 128, Shaikh Darson Ali v Suraj Mal

Article 174 Note 8

8. Effect of bar.—If the judgment-debtor does not take steps to have the payment or adjustment certified within ninety days from the date on which the alleged payment or adjustment was made, it will not be open to him to prove it in the Court executing the decree. In other words, where an application under Rule 2 sub-rule 2 of Order 31 is barred by limitation, he will not be allowed to evade the provisions of this Article by securing an investigation of the same atter under Section 47 of the Civil Procedure Code, in execution proceedings. Under the same circumstances, a suit for declaration that the decree has been satisfied and is consequently incapable of execution. Is not maintainable. 3

As to the remedy of the judgment debtor in such cases, see Notes 29 and 30 under Order 21 Rule 2 of the Authors' Commentaries on the Civil Procedure Code.

Article 175

175.* For payment Six months. The date of the amount of a decree by instalments.

Act of 1877 Same 23 above. Acts of 1871 and 1859

*

No corresponding provision.

(1925) A I R 1925 Nag 874 (375) : 88 Ind Cas 48, Maroti v. Narayan. (1910) 7 Ind Cas 55 (58) (Cal), Mon Mohan v. Dwarahanath.

Note 8

 (1934) A I R 1934 All 209 (210): 56 All 694: 148 Ind Cas 1118, Murari Lail v Raghubir Saran.

(1915) A I R 1915 Cal 73 (73): 25 Ind Cas 884, Golam Majahar Chowdry v. Goloke Charan.

(1925) A I R 1925 Lab 566 (567) · 67 Ind Cas 635, Mul Chand Todar Mal v. Mt. Champa.

(1931) A I R 1931 Lah 105 (106): 131 Ind Cas 216 . 1931 Cri Cas 169 : 32 Cri L Jour 647, Lachman Singh v. Emperor.

(1906) 29 Mad 312 (313): 16 Mad L Jour 33, Ganapathy Tyer v. Chenga Reddy.

(1921) A I R 1921 Pat 135 (137, 138) 63 Ind Cas 535, Radha Kant Lal v. Farbati Kur. 149: 15 Pat 422, Harihar

aikh Darsan Ali v. Suraj

Mal.

Synopsis

- 1. Legislative changes.
- 2. Scope.
- Effect of order on application made beyond six months.
- 4. Decree must be for payment of money.
- 5. Starting point.
- Legislative changes,—This Article is the same as Article 175
 of the repealed Act of 1877. There was no Article corresponding to
 this Article in the Act of 1871.

2. Scope. — Order 20 Rule 11 sub-rule 2 of the Cavil Procedure Code provides that after the passing of docree for the payment of money, the Court may, on the application of the judgment.debtor with the consent of the decree.holder, (in Madras, Nagpur, Rangoon and Sind, after notice to the decree-holder), order that payment of the amount decreed shall be postponed or shall be made by instalments.

This Article applies to applications under the said Rule for an order for payment of the decree by instalments. An application for an order for postponement of the payment of the decree is not within this Article.

3. Effect of order on application made beyond six months.—An application for payment of the amount of a decree by instalments will be in time if made within six months of the date of the decree or order. By virtue of Section 3 ante, a Court cannot entertain such an application after the expiry of the six months prescribed by this Article. But, as has been seen in Note 19 to that Section, where a Court decides that an application is in time, the decision would operate as res judicata between the parties. Where an application such as is contemplated by this Article is actually entertained by the Court after the expiry of the period of six months and an order is passed allowing the application, the Court will be considered to have decided that the application was within time and the parties would be bound by such order. The contrary new taken in some cases,*

Article 175 - Note 3

1 (1917) A I R 1917 Mad 188 (188) 34 Ind Cas 393, Perumal Naucher v. Sheikh Daucod Rowther

(1932) A. I. R. 1932 All. 273 (281)
 54 All. 573
 138 Ind Cas 553 (F. B),
 Gobardhan Das v. Dan Dayad
 (1937) A. I. R. 1937 C. 11 250 (230, 257)
 170 Ind Cas 767, Manmohan Sanyal

Durga Chura Gooce

(1891) 1891 run Re No ... Sanasenana v. Ananta Ram (Do)

 (1924) A I R 1924 Lah 342 (343-344)
 Ind Cas 477, Banara Das v. Ramzon Article 175 Notes 1—3

Article 175 Notes 3-5

namely, that the order is a nullity and is inoperative, does not seem to be correct.

- 4. Decree must be for payment of money .- Order 20 Rule 11 of the Civil Procedure Code applies only to a decree for the payment of money and consequently the application that is governed by this Article must be one in reference to a decree for the payment of money and not in respect of a decree for sale on a mortgage.
- 5. Starting point. Time, under this Article, runs from the date of the decree. The word "decree" would, where the decree of the original Court is appealed against, include the appellate decree also. In such a case, time will run from the date of the appellate decree whether it merely confirms the original Court's decree or supersedes it.1 Where, however, the appeal is not entertained at all, though filed, the original decree is and continues to be the subsisting and final decree or order for the purpose of limitation.2 Similarly, the "date of the decree" will be the date of the original decree where a review petition is filed but it is dismissed.3

Article 176

176.* Under the Ninety days. The date of samo Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.

the death of the deceased plaintiff or appellant.

Act of 1877

175 A. - Under section 365 of the | Six months. | The date of the death Code of Civil Procedure by the legal representative of a deceased plaintiff, or under that section and section 582 of the same Code by the legal representative of a deceased plaintiff-appellant or defendant-appellant.

of the deceased plaintiff or of the deceased plaintiff-appellant or defendant appellant.

Acts of 1871 and 1859 No corresponding provision.

- (1887) 14 Cal 348 (350) . 11 Ind Jue 377, Abdul Rahaman Sodagur v. Bullaram Marwars. (1921) A I R 1921 Pat 340 (340): 58 Ind Cas 393, Gobardhan Prasad v.
 - Bishunath Prasad.

(See also (1900) 1900 Pun Re No. 96 : 1901 Pun L R No. 23, Nabi Balsh v. Gori Mal.

Nete 4

1. See the Authors' Commentaries on the Code of Civil Procedure, Order 20 Rule 11 Note 2.

Note 5

- 1. (1932) A I R 1932 Rang 54 (55): 135 Ind Cas 858, Abdul Karım v. Maung
- San Kyaw. 2 (1916) A I R 1916 Mad 883 (886) : 28 Ind Cas 367 : 39 Mad 1196, Venu-
- gopal Mudals v. Venkatasubbiah Chelly. 3. (1916) A I R 1916 Mad 883 (885, 886): 59 Mad 1196: 28 Ind Cas 267, Venugopal Mudals v. Venkatasubbiah Chetty.

Synopsis

- 1. Legislative changes.
- 2, Scope of the Article.
- 2a. Death after preliminary and before final decree,
- 3. "Legal representative."
- 4. Onus of proof.
- 5. Starting point.
- 6, Extension and exclusion of time prescribed by this Article.
- One representative applying within time Another, if can be brought on record afterwards.

Other Topics

1. Legislative changes.

- 1. Article 171 of Act XV of 1877 applied only to applications by the legal representatives of a deceased plaintiff and the period of limitation was sixty days. By Act XII of 1879, the scope of the Article was extended so as to include applications by the legal representatives of deceased appellants also.
- 2 By Act VII of 1888 the number of the Articlo was altered to 175 A and the period of limitation was extended to six months.
- By Section 2 of the Indian Limitation and Code of Civil Procedure (Amendment) Act, XXVI of 1920, the period of limitation under this Article was reduced to ninety days
- Scope of the Article. Order 22 Rulo 3 sub-rule 1 of the Code of Civil Procedure provides that where,
 - one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs, or
 - 2 a sole plaintiff or sole surviving plaintiff dies and the right to sue survives,

an application can be made for making the legal representatives of such deceased plaintiff parties to the suit

Order 22 Rule 11 of the same Code provides that in the application of the Order to appeals, the word "plaintiff" includes "appellant"

Article 176 - Note 1

Article 176 Notes 1—2

Article 176 Note 2

This Article applies to applications to have the legal representatives of a deceased plaintiff or of a deceased appellant made parties to the suit or appeal, i. e., to applications under Order 22 Rule 3 read with Rule 11.

The Article does not apply to applications for substitution not made in the course of the suit or appeal, Thus, it has no application to cases where the plaintiff dies after decree2 or to applications made in execution proceedings.3 Nor does the Article apply where the deceased is neither a plaintiff nor an appellant, but merely an applicant for leave to appeal, or an assessee in a proceeding under Section 66 sub-section 2 of the Income-tax Act 5

There is a difference of opinion as to whether the rules as to the substitution of legal representatives contained in Older 22 apply to

Note 2

- (1907) 11 Cal W N 156 (158), Mehars Bibs v. Yahub Ali.
- (1933) A I R 1933 All 111 (112): 144 Ind Cas 340. Chanderdee Chaube v. Megh Naram. (Rule 3, Chap. 11 of the Rules of the Allahabad High Court requires an application by the legal representative of a party dying after decree to apply for permission to appeal-Article 176 does not apply to such an application)
 - (1879) 5 Cal L R 108 (111), Cally Churn Mullick v. Bhuggobutty Churn Mullich.
- (1881) 8 Mad 236 (237), Ramanada Sasirs v. Menachi Ammal. (Appeal by legal representative of plaintiff who has died after decree-Representative has same period to file his appeal as the plaintiff himself would have had.)
 - (Sec also (1927) A I R 1927 Oudh 156 (157): 101 Ind Cas 174: 9 Luck 464, Mt Lakhpats Euer v. Daulat Singh.]
- (1881) 3 All 759 (765) 1881 All W N 57, Dulare v. Mohan Singh. (1879) 3 Bom 221 (222), Gulabdas v. Lakshman Narhar.
 - (1923) A I R 1923 Cal 626 (628) . 74 Ind Cas 929 . 50 Cal 650, Rajah Hemendra Lal Singh Deo v. Fakir Chand.
 - (1926) A I R 1926 Cal 957 (958) , 96 Ind Cas 378, Alhoy Kumar v. Surendra Lal
 - (1910) 5 Ind Cas 272 (273) (Cal), Debendra Nath v Khirode Chundra
 - (1929) A I R 1929 Pat 200 (200) 117 Ind Cas 165, Bunbadhar Panda V. Abdul Zalal (By virtue of O 22 R. 12, nothing in Rule 3 applies to proceedings in execution of a decree or order and therefore a pending execution proceeding does not abate by reason of the death of any of the joint decree-holders)
 - (1935) A I R 1935 Pat 117 (118) . 13 Pat 777 : 155 Ind Cas 969, F. A. McNaught v. Mt. Saraswati Thakuram 10001 . T D 1007 D C 117 (117) OR T-d Cas 482 : 4 Pat

tha v. Anant Praamment of mesne in the suit and ubstitution is not

necessary.)

- (1932) A I R 1932 Mad 73 (76) · 55 Mad 352 : 135 Ind Cas 561 (F B), Venkatachallam Chetty v. Ramaswamy Seria:]
- 4. (1934) A I R 1934 Sand 36 (38) : 28 Sand L R 150 : 148 Ind Cas 819, Noor Ahmed v. Chattomal Gurmukhdas. 5. (1930) A I R 1930 Pat 81 (82) 9 Pat 240 : 126 Ind Cas 833 (S B), Maharajahadwaja of Darbhanga v. Commissioner of Income-tax.

appeals against orders in execution. On the view that they do apply, applications for substitution will be governed by this Article. Where the appellant has died before the appeal is dismissed for default, the legal representative's right to apply to be brought on record need not be exercised within the period limited by Article 163. The application can be made within the period prescribed by this Article.?

Article 176 Notes 2—6

- Death after preliminary and before final decree. See Note 5 to Article 177, infra
- 3. "Legal representative."—See Note 43 to Section 6 ante, and the undermentioned cases.
- 4. Onus of proof. The onus is on the applicant to prove the date of the death of the deceased plantiff or appellant, as the case may be, and that the application has been made within the period prescribed by this Article 1
- 5. Starting point.—Time runs from the date of the death of the deceased plaintiff or appellant, and the period of limitation is minety days from that date This will be so even if the death occurred before the Amending Act 26 of 1930 came into force.¹
- Extension and exclusion of time prescribed by this Article. — Section 5, ante, has no application to applications under
- 6 See the Authors' Commentaries on the Code of Civil Procedure, Order 22 Rule 12 Note 1.
- (1918) 19 Ind Cas 526 (527). 16 Oudb Cas 194: 40 Ind App 151 35 All 331 (P C), Deb Bakksh Singh v Habib Shah , (1891) 4 C P L R 189 (188), Bhopatsingh v Gayaram

Note 3

- 1 (1920) A I R 1920 Cal 26 (27) 115 Ind Cas 164, Faguir Banco v Rahwn Bur (Bona fide application by all the representatives who are known and willing to join in the application is sufficient compliance with Order 22 Rule 3)
 - (1927) A I R 1927 Lah 94 (95) 100 Ind Cas 418, Mahomed Haisan v Inayat Hussaus (The expression "legal representative" means and includes one person as well as several persons according as they expossent the whole interest of the deceived person.)
 - (1922) A I R 1922 Lah 175 (176), Goor Backan Singh v Gian Singh. (Intermediller may be representative and can be made a party in place of deceased)

[See also (1933) A I R 1933 Lah 356 (359) 14 Lah 543 . 142 Ind C15 649, Chunt Lal Tuln Bam v Amin Chand]

Note 4

1 (1887) 1887 All W N 60 (60), Harnandan v Durga.

Note 5

(1921) A. I. R. 1921 Mad 650 (651)
 62 Ind Cas 795, Vasthinatha Iyer v. Govindasamy Odojar.
 (1924) A. I. R. 1924 Dom. 416 (417)
 50 Ind Cas 761, Vijaya Singh v. Shitaji Rao.

Antiela 476 Notes 6_7

Order 22 Roles 3 and 11. But where no application under Rule 3 is filed and the snit abates, the representative may, under Order 22 Rule 9. amily to set eside the shatement on showing sufficient cause for not filing the application for substitution within time. An application after the time prescribed by this Article, to bring on record the legal representative of a deceased plaintiff or appellant was in the undermentioned eases. I treated as one under Order 22 Rule 9 to got paids the abatement

Section 6 of the Act is limited to applications in execution and does not apply to applications contampleted by this Article 2 .

7. One representative applying within time - Another, if can be brought on record afterwards. Where one of two legal representatives has applied in time, to be made a party, and the application has been granted, the other legal representative may be brought on the record subsequently.

Where there are two rival claimants seeking to be brought on record, one claiming by inheritance and the other by bequest, the right to be brought on record vests in the one or the other with effect from the date of death of the deceased party. Limitation begins to run against both from that date and each will get barred by time at the expiry of the limitation prescribed by this Article. The one who has not applied to be brought on record within time cannot continue the suit revived by his rival's application in time.3

Article 177

177.* Under the Ninety days. same Code to have the legal representative of a deceased defendant or of deceased respondent made a party.

The date of the death of the deceased respondent.

Act of 1877 175 C. - Under section 368 of the Gode of | Six months. | The date of the Civil Procedure, to have the legal representative of a deceased defendant made a defendant. or under that section and section 582 of the same Code to have the legal representative of a deceased plaintsff-respondent or defendantrespondent made a plaintiff-respondent or defendant-respondent

death of the deceased defendant or of the deceased plaintiff . respon-dent or defendantrespondent.

(1929) A I R 1923 Neg 166 (167): 71 Ind Cas 176, Numba v. Mt. Janhi. Note 6

2. (1927) A I R 1927 Nag 343 (344) : 104 Ind Cas 398, American v. Ratan Lal.

^{1. (1928)} A I R 1928 Lah 746 (747) : 112 Ind Cas 5, Kirva Ram v. Bhagat

⁽¹⁹²⁴⁾ A I R 1924 Lah 424 (424) . 74 Ind Cas 17, Badlu v. Mt. Narami. 2, (1917) A I R 1917 Low Bur 182 (193) : 35 Ind Cas 438, Ma Min Thin V. Maung Po Win.

Note 7 1 (1912) 13 Ind Cas 313 (313) (Mad), Venkata Rao v. Marikurthu Ammal. (1933) A I R 1933 Rang 234 (234) : 145 Ind Cas 693, Ahmad v. Mykeshuda

Synopsis

Article 177 Note 1

- 1. Legislative changes.
- 2. Scope.
- 3. Execution proceedings.
- 4. Execution appeals.
- Death after preliminary and before final decree.
- 6. Legal representative.
- 7. Extension of time.

Other Topics

Application for leave to appeal to I		See Note 2, Pt. 2		
Application for leave to sue as pau	per	•••	***	See Note 2, Pt. I
Revision application	•••	•••	•••	See Note 2, Pt. 6
Two or more legal representatives		•••		See Note 7, Pt 5

1. Legislative changes. — This Article corresponds to Article 175C of the Act of 1877 and was inserted in that Act by Act VII of 1888. Article 175C made specific mention in the first column to Sections 368 and 589 of the Ovil Procedure Code of 1882. Reference to provisions of the Code has been omitted from the Article in its present form. Before this Article was enacted in the Act of 1877, the general Article 178 was held to govern applications to hring on record the representatives of a deceased defondant or respondent.¹

Article 175 C provided a period of six months.

The Indian Limitation and Civil Procedure Code (Amendment) Act XNVI of 1920 provided by Section 2 that "In the third division of the First Schedule to the Indian Limitation Act, 1908, in Articles 176,178 and 179, for the word 'Ditto' in the second column, the words 'Ninety days,' Sx months' and 'Ninety days' respectively shall be substituted." As no mention was made of Article 177 in this Section,

Acts of 1671 and 1659

No corresponding provision.

[See also (1926) 97 Ind Cas 142 (142] (Lab], Gurdit Singh v Saucan

(1919) A I R 1919 Nag 150 (152) 15 Nag L R 21 · 49 Ind Cas 91, Amolalsao v. Coundrao]

Article 177 - Note 1

(1888) 10 All 270 (271) . 1889 All W N 114 (F B), Ram Sarup v. Ram Saha.,
 (1888) 10 All 261 (267) * 1883 All W N 112 (F B), Deb Din v Chunna Lal.
 (1888) 10 All 260 (263) . 1883 All W N 111 (F B), Chajmal Das v Jogađamba Pratad.

(1886) 9 Mad 1 (i) (F B), Lakshmi v Srs Deri.

Article 177 Notes 1—2 it was held by the High Courts of Lahore, Madras, Allahabad and Patna that the Amending Act did not reduce the period of limitation under Article 177 and that it remained six months. The High Courts of Calcutta and Bombay' took the opposite view. In view of this conflict of opinion the Legislature passed the Repealing and Amending Act XI of 1923, laying down definitely that the period of limitation under Articles 176, 177 and 179 is ninety days.

- Scope. —Order 22 Rulo 4 sub-rule 1 of the Code of Civil Procedure provides that where.
 - one of two or moro defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or
 - a sole surviving defendant dies and the right to sue survives.

an application can be made for making the legal representatives of such deceased defendant parties to the suit.

Order 22 Rule 11 of the same Code provides that in the application of the Order to appeals the word "defendant" notudes "respondent." This Article applies to applications to have the legal representatives of a deceased defendant or a deceased respondent made a party to the suit or appeal, i.e., to applications under Order 22 Rule 4 read with Rule 11 of the Code. "

Where the deceased person is not a "defendant" in a suit or a "respondent" in appeal, Order 22 Rules 4 and 11 do not apply and consequently this Article also does not apply. Thus, it does not apply to an application to bring on record the legal representatives of a deceased opponent in an application for leate to sue in forma

- 2. (1925) A I R 1925 Lah 93 (93): 78 Ind Cas 771, Arjan Das v. Nanal Chand. (1924) A I R 1924 Lah 65 (67): 4 Lah 867: 77 Ind Cas 409, Gobind Das v.
 - Rup Kishore. (1922) A I R 1922 Lab 211 (213): 69 Ind Cas 749, Rup Kishore v. Dhagat Gebruid Das
- S. (1926) A J R 1926 Mad 65 (66): 92 Ind Cas 566, Subramania Iyer v. Shanmunam Chelliar.
- (1925) A I R 1925 All 263 (264): 47 All 335: 86 Ind Cas 161, Munitar ud-Daula Muharram Ali Khan v. James R. R. Shinner.
 - Daula Muharram Ali Khan v. James R. R. Shinner. (1925) A I R 1925 All T7 (76): 92 Ind Cas 330, A. G. Shinner v. Muharram Ali Khan.
- (1927) A I R 1927 Pat 142 (143): 97 Ind Cos 316, Brinandan Prasad v. Mahabir Prasad
- 6. (1924) A I R 1924 Cal 74 (79) . 50 Cal 549 : 75 Ind Cas 81, Seedoyal Khemka v. Johannal Manmull
- 7. (1923) A I R 1923 Bom 299 (299) · 77 Ind Cas 474, Husenuddin Nuruddin v. Dulakshidas Keshatlal.

Note 2

1a (1931) A I R 1931 Pat 164 (166): 10 Pat 341; 132 Ind Cas 100, Waleyalunnissa Begam v. Chalakhi.

Article 177 Notes 2-3

paupers.) or for leave to appeal to the Pricy Council.² or of a person who is dead before the institution of a suit, but whose name appears as a defendant in the suit.³ Nor does the Article apply when a defendant dies after decree.⁴ But the Article applies to applications to make the legal representatives of a deceased respondent in second appeal parties to the appeal.³

A retision application is not a 'suit' or 'appeal.' There cannot be any question of abatement in such applications, the whole theory of abatement being inapplicable to such applications and hence the provisions of Order 22 do not apply to them "

The Limitation Act does not apply to proceedings under the Companies Act 1913 and where the respondent in an application for an order for the balance of contributions dies, it is not necessary to bring his legal representatives on record within the time prescribed by this Article.⁷

- 3. Execution proceedings. Order 22 Rule 12 of the Civil Procedure Code specifically declares that Order 22 Rule 4, inter alia, does not apply to execution proceedings. This Article will not govern the case of death of a defendant or respondent in execution proceedings and an application for substitution in such proceedings need not.
 - (1929) A I R 1929 Sind 136 (186) 116 Ind Cas 111, Rhatijanbai v. Nur Muhammad.
 - (1928) A I R 1928 Mad 278 (279) 51 Mad 697; 110 Ind Cas 318, Subbiah v. Bala Tirupura Sundra
 - (1906) 33 Cal 1165 (1169) 4 Cal L Jone 234, Lalit Mohan v Satish Chandra (1863) 7 Bom 373 (376), Janardan Vithal v Anant Mahadet
- 2 (1934) A I R 1934 Sind 36 (37, 39) 148 Ind Cas 819 23 Sind L R 150, Noor Ahmed Challomal.
- 3 (1907) 31 Vad 86 (8n) 17 Mad L Jour 55I 3 Mad L Tim 12, Veerappan Chetty v Tindal Ponnen
 - (1919) A I R 1919 Cal 257 (258) 51 Ind Cas 160, Krista Das Laic v Ehirada Kanta Roy. (See also (1914) A I R 1914 Cal 895 (896) 24 Ind Cas 112, Bejoy
 - Chand v Amulya Charan.]
- (1891) 3 Mad 236 (239), Ramanada Sastri v Minachi Ammal.
 (1904) 28 Mad 361 (362), Sambasna Chetty v Veera Perumal Mudaly.
- (1904) 28 Mad 498 (499) 15 Mad L Jour 404, Narasumham v. Mohamud Valtzullah.
 - (1907) 29 All 535 (536) 4 All L Jour 397 1907 All W N 155, Madhuban Das v Naram Das
 - (1908) 10 Bom L R 509 (513), Sheikh Adam v. Balaji Krishnaji.
 - (1907) 34 Cal 1020 (1023) 11 Cal W N 1100; 6 Cal L Jour 715, Upendra Kumar Chabrataris v. Sham Lal Mondol.

marks Sugar Works Ltd.

point || 6 (1920) A I R 1920 Sind 120 (120) . 80 Ind Cas 456 (457), Dalsho v. Piaro. 7. (1938) A I R 1938 Pat 287 (288) : 178 Ind Cas 898, Sumitra Kner v. Sifa-

Article 177 Notes 3-5

he made within the time prescribed by this Article. The proper course in such cases is to apply for execution against the legal representatives themselves. It has, however, heen held in some cases that when a judgment-debtor dies, the decree-holder should get, on the analogy of this Article, the period at least prescribed by it for applying to hring his legal representatives on the record. The properties of the period at least prescribed by the described by the state of the properties of the record.

- 4. Execution appeals. There is a difference of opinion as to whether the rules as to substitution of legal representatives contained under Order 22 apply to appeals against orders in execution. On the view that they do apply, applications for substitution of the legal representatives of a deceased defendant or respondent will be governed by this Article.²
- 5. Death after preliminary and before final decree. In suits requiring a preliminary and a final decree, can there he are abatement on the ground that no application was filed in time to implead legal representatives on the death of a plaintiff or of a defendant after the preliminary, but before a final decree? It was

Note 3

- (1932) A I R 1932 Pat 222 (223): 11 Pat 546: 138 Ind Cas 91, Sheo Gobind Ram v. Mt. Kishundansi Kuer.
 - (1924) A I R 1924 Lah 316 (318): 73 Ind Cas 887, Wahid Baksh v. Lalia Parshad.
 - (1911) 10 Ind Cas 405 (406) (Lab), Amolak Ram v. Shanu Ram.
 - (1929) A I R 1929 Pat 200 (200): 217 Ind Cos 185, Bunbadhar Panda v. Abdul Zalil.
 - (1927) A I R 1927 Mad 184 (184): 50 Mad 1: 90 Ind Cas 627, Palaniappa Chetti v. Valliammas Achi.
 - (1923) AIR 1923 Lab 560 (563) : 74 Ind Cas 577, Mir Khan v. Sharfu Punnun.
 - (1879) 3 Bom 221 (222) : 4 Ind Jur 34, Gulabdas v. Lakshman Narhar.
 - (1880) 5 Bom 29 (37), Kalyanbhar Dipchand v. Ghanasham Lal.
- 2. (1905) 2 Cal L Jour 544 (545, 546), Jogendra Nath Roy v. Rasik Chandra Banerys.
 - (1914) A I R 1914 P C 129 (131): 42 Cal 72: 41 Ind App 251: 24 Ind Cas 304 (P C), Raghunath Das v. Sunder Das Khetrs.
 - (1920) A I R 1920 All 171 (172): 42 All 570: 57 Ind Cas 610, Bhagwan Das
- (1909) I Ind Cas 163 (174): 36 Cal 543, Jogendra Chandra Roy v. Shyam Das. 3. (1921) 62 Ind Cas 52 (53) (Pat), Rameshar Singh v. Mathu Misir.
 - [See also (1982) 1832 Pun Ro No. 151, Mt. Assebbi v. Ganda Mal.
 (Application for substitution of the legal representative of a
 deceased judgment-debtor is in substance an application for
 execution within S. 234, O. P. C. of 1882 and Art. 179, Limi-

Note 4

tation Act of 1877.)]

- See Note 1 to O. 22 R. 12 of the Authors' Commentaries on the Civil Procedure Code.
- 2 (1934) A I R 1934 Mad 664 (664): 151 Ind Cas 777, Gangu Naidu v. Mullenna.

held in the undermentioned cases¹ by the High Court of Allahabad that the suit would abate, the reason being that n suit is "pending" till a final decree is passed. The said Court did not accept the position that the principle laid down by the Privy Council in Lachmi Narain v. Balmakund, I. L. R. 4 Patan 61, was appleable to such cases. In order to avoid this difficulty, Order 22 Rule 12 has now been amended by that Court so as to make Rules 3, 4 and 8 inapplicable to proceedings after the preliminary decree. ¹⁸

All the other High Courts are agreed on the authority of the said Privy Council decision that the Rule does not apply to such cases and that there can he no abatement on death after a preliminary, and before a final decree.

6. "Legal representative,"—As to the meaning of the expression "Legal Representative," see Note 43 to Section 6 ante and Notes to Order 22 Rules 3 and 4 of the Anthors' Commentaries on the Civil Procedure Code.

7. Extension of time,—Under Section 368 of the Civil Procedure Code 1882, an application for substitution could have been made beyond the ported of aix months presented by Article 175C, if there was sufficient cause for the delay ¹ But under Ordor 22 Rule 4 of the present Civil Procedure Code, if no application for substitution

Note 5

- 1 (1930) A I R 1930 All 779 (782, 783) 126 Ind Cas 20: 52 All 910, Annol Singh v. Hari Shankar Lal.
 - (1922) A 1 R 1922 All 396 (397) 68 Ind Cas 251, Jagarnath Umar v Ramkaran Singh
 - The same then useals taken by the Sind Court in the undermentioned case: (1926) A I R 1926 Sind 20 (21) 89 Ind Cas 238, Tulis Dass Keshao Das v. Ramsan Abdulla
- 14 (1934) A I B 1934 All 465 (468) 151 Ind Cas 755, Naraus Das v Bhaguats Prasad
- 2 (1933) A I R 1933 Rang 318 (319): 11 Rang 446 147 Ind Gas 730, Muthiah Chettiar v. Tha Zan Hla.
 - (1928) A 1 R 1928 Mad 914 (918) . 112 Ind Cas 116 : 51 Mad 701 (F B), Perumal Pillas v Perumal Chetty.
 - (1929) A I R 1929 Cal 648 (649) 125 Ind Cas 287, Mohan Sardar v Hem Chandra
 - (1928) 120 Ind Cas 77 (77) (Mad), Peetha Suamegadu v. Bamachandrayya (1929) A I R 1929 Nag 206 (207) 122 Ind Cas 447, Debuath v Inscena Dat, (1929) A I R 1929 Nag 142 (144) 116 Ind Cas 657 . 27 Nag. L R 119 (F B),
 - (1929) A I R 1929 Nag 142 (144) 116 Ind Cas 657 . 27 Nag L R 119 (F B), Bapu v Gulabchand. (1927) A I R 1927 Oudh 561 (561) 106 Ind Cas 332, Kalu Ram v Gaya Dın.
 - (1927) A I R 1927 Oudh 156 (157) 101 Ind Cas 174 . 2 Luck 461, Mt. Lahkpats Kuer v. Daulat Singh (1921) A I R 1921 Nog 32 (33) I I Nag L R SI . 64 Ind Cas 307, Tularam v.
 - Tuharam. (1930) A I R 1930 Lah 329 (330) 122 Ind Cas 227, Rahim Balsh v Walaiti Ram.

Note 7

I. (1889) 11 All 408 (414) 1888 All W N 111 (F B), Chajmal Das v Jagdamba Pravad (Held, sufficient cause within S. 368 was not shown) Article 177 Notes 5—7

Article 177 Note 7

is made within the period of ninety days from the death of the defendant or respondent, the suit or appeal abates and the Court has no power to enlarge the time for sufficient cause. Section 5 of the Limitation Act does not apply. But after abatement, it is open to the plaintiff or appellant to make an application to set aside the abatement under Order 22 Rule 9, and the Court can, on sufficient cause being shown for not applying in time for substitution, extend the time.

An application made to bring the legal representatives of the deceased defendant on record after the time prescribed therefor, may be treated as an application to set aside the abatement, and on proof of sufficient canse for delay, the application may be granted.

Section 6 of the Limitation Act does not apply to an application under Article 176 or Article 177 and hence the period of ninety days cannot be enlarged by reason of the applicant's minority.

```
(1907) 29 All 535 (537) : 4 All L Jour 397 : 1907 All W N 155, Madhuban Das
v. Naram Das
```

^{(1887) 1887} Pun Re No 42, Gaman v. Balsha.

^{(1907) 1907} Pun Re No. 118 : 1907 Pun W R 194, Dadu v. Kadu.

^{(1903) 7} Cal W N 529 (531), Syed Hossem Ali v. Abdur Rahim.

 ⁽¹⁹²²⁾ A I R 1922 Lah 191 (131) . 65 Ind Cas 121, Shah Muhammad v. Karam Ilahs.

⁽¹⁹¹⁴⁾ A I R 1914 All 94 (95) . 36 All 235 · 25 Ind Cas 48, Secretary of State

v. Jawahir Lal.
3. (1928) A I R 1928 Lah 746 (747): 112 Ind Cas 5, Kirpa Ram v. Bhagat
Chand.

⁽¹⁹²⁴⁾ A I R 1924 Lah 424 (424) : 74 Ind Cas 17, Badlu v. Mt Naraini.

⁽¹⁹³³⁾ A I R 1933 Lah 916 (920) : 149 Ind Cas 1187, Sham Das v. Mahabir Das.

⁽¹⁹⁸⁴⁾ A I R 1934 Lah 315 (315) : 147 Ind Cas 609, Bhartu v. Udmi.

⁽¹⁹²⁹⁾ A I R 1929 Lah 129 (130) : 117 Ind Cas 684 : 10 Lah 816, Dina Nath v. Sayad Habib.

⁽¹⁹³³⁾ A I R 1933 Nag 85 (86, 87): 29 Nag L R 118: 144 Ind Cas 368, Gabrulal Firm v. Court of Wards, Bilaspur.

⁽¹⁹²⁶⁾ A. I. R. 1926. Lah. 474. (478): 94. Ind. Cas. 800, Maur. Rahman v. Mushkurun-nusa. (Where it was found that there could not in fact be any reason for applicant to ask for excuse and there was no ascrition that there had been delay due to reasonable cause. Meld, the application could not be treated as one under R. 9.

⁽¹⁹³⁷⁾ A I R 1937 Lah 455 (457) · 174 Ind Cas 700, Duanchand Nurnal v. Bhagwan Chand. (1920) A I R 1920 Smd 82 (83) · 78 Ind Cas 509, Manager, Encumbered

⁽¹⁹²⁰⁾ A I R 1920 Smd 82 (83) . 78 Ind Cas 569, Manager, Encumbered Estates in Sind v. Tharimal.

[[]See also (1916) A I R 1916 Mad 440 (441) · 30 Ind Cas 679, Arunachalam Chettiar In re.

^{(1892) 16} Mad 319 (320), Mallikarjuna v. Pullayya.)
4. (1917) A I R 1917 Low Bur 132 (133) . 35 Ind Cas 433, Ma Min Thin v. Maung Pa Win.

^{(1912) 15} Ind Cas 366 (367): 6 Low Bur Rul 52, Ma Sem Human Lutchman Chetty.

^{(1901) 28} Mad 359 (300), Paru v. Raman Menon.

^{(1885) 1885} Pun Re No. 91, Rihana v. Harditta.

If one of the representatives of the deceased defendant or respondent is brought on record in time, there is no bar to bring the other representatives on record subsequently.8

Article 177 Note 7

178. Under the Six months. The date of the same Code for the filing in Court of an award in a suit made in any matter referred to arbitration by order of the Court or of an award made in any matter referred arbitration without the intervention of a Court.

award.

Article 178

Sunopsis

- 1. Legislative changes.
- 2. Scope of the Article.
- " Award."
- 4. Starting point.
- 5. Extension of time.

1. Legislative changes.

1 The Act of 1859 did not apply to applications But Section 327 of the Code of Civil Procedure 1859 provided that an application to file an award should be made within 6 months of the award 1

Act of 1877

176 -Under the Code of Cavil | Six months The date of the award Procedure, section 516 or 525. that an award be filed in Court

Act of 1871

165 -Under the Code of Civil | Six months The date of the award Procedure, section three hundred and twenty-seven, that an award he filed in Court.

Act of 1859 No corresponding provision

5. (1912) 13 Ind Cas 313 (313) (Mad), Venhata Bow v Marshruthu Ammal (1926) A I R 1926 Pat 276 (276) 94 Ind Cas 209, Sadu Saran Pande v. Nanda Kumar Singh

Article 178 - Note 1

1 (1865) 5 Suth W R 123 (123), Phyrub Jha v Hunnoman Duti Jha-

Article 178

of the Schedule would clearly be covered by the second portion of the first column of the Article.

the first column of the Article.

The Article applies only to applications to file an award. A party in whose favour an award is made has two remedies open to him, He may make an application to file the award in Court in which case this Article will amply. He may also institute a surf to fr that nursoss.

3. "Award."—An award must be a single instrument complete in itself. 14

This Article has no application to such suits.3

Where the agreement to refer provides that the matter in dispute may be taken up and dealt with serictim, and the award delivered hit by bit, a portion so decided may be taken as a distinct award. An award filed without the intervention of the Court can be split up and need not be filed as a whole. When the order filing the award and the order passing a decree in terms of it are contained in the same order, the two parts can be separated and it has been held that though there may be no appeal against the decree, an appeal can be filed against the earher portion of the order directing the filing of the award.

An award does not become invalid merely because it has not been made a rule of Court within the prescribed period of limitation.

4. Starting point.—Time, under the Article, runs from the date of the award. The "date of the award" is the date when the award is published or delivered to the parties so that they may have notice of its contents and not the date when it was actually written and signed, which in many cases might be much earlier. A party applied in time to file an award made without the intervention of the Court, but prayed that a decree might be greated after excluding certain

3. (1935) A I R 1935 Lah 134 (194), Ratan Chand v Rup Lal.

(1903) 4 Ind Cas 821 (822) (1907-09) Upp Bur Rul Lam p. 9, M: Le Byu v. Nga Chit Pu.

(1923) A I R 1923 Rang 108 (109) . 70 Ind Cas 517 4 Upp Bur Rul 124, Maung Ne Dun v. Maung Cho.

Note 3

- 1a (1869) 12 Suth W R 397 (400): 8 Beng L R 319n, Joy Mungal Singh v. Mohan Ram.
- 1. (1879) 4 Cal L R 92 (93), Sm. Shoshemulhs Debia v. Nobin Chunder Roy.
- (1929) A I R 1929 Bom 193 (195) 117 Ind Cas 523, Kashinath Mahadei v. Gangubai Keshai
- (1928) A I R 1929 Mad 969 (971): 112 Ind Cas 691, Seliarayan Samson v. Amalorpai anadam.
- (1930) A I R 1930 Oudh 51 (51): 124 Ind Cas 448, Thalur Din Singh v. Bhagwan Din Singh.

Note 4

- (1874) 21 Suth W R 24S (24S), Sreenath Chatterjee v Kylash Chunder Chatterjee
 - (1883) 9 Cal 575 (578), Dutto Singh v Desad Bahadur Singh.
 (1916) A I R 1918 Pat 83 (90) . 4 Pat L Jour 394 48 Ind Cas 711, Eury Lal v. Bancon Lal.

Article 178 Notes 4--5

items of the award, on the ground of fraud practised on the arbitrators. On objection by the other side, that a part of the award cannot be filed, the party made a second application praying that the prayer in the original application for exclusion of certain items may be deleted. This application was more than six months of the date of the award. It was held that the original application was a valid application to file the award and was made in time, and that the subsequent application to amend the prior one, though beyond six months of the award, did not affect the validity of the prior amplication.²

5. Extension of time.—Time, under this Article, cannot be extended by reference to Section 5 ante as that Section applies only to certain specified applications and does not cover an application to file an award.¹

Section 6 ante applies only to suits and applications for execution and therefore does not apply to applications to file awards.

Section 14 may, however, apply to such applications and the time spent bona fide in infructuous proceedings in a wrong Court may be excluded in computing the period of limitation prescribed by this Article.³

Article 17

179.* By a person Ninety days. desiring to appeal under the same Code to His Majesty in Council for leave to appeal.

110

The date of

the decree

appealed

Synopsis

- 1. History of the Article.
- 2. Scope.
- 3. Starting point.
- 4. Extension of time.

Act of 1877

177.—For the admission of an appeal | Six months, | The date of the decree to Her Majesty in Council.

Acts of 1871 and 1859 No corresponding provision.

2 (1936) A I R 1936 Lah 682 (653) : 164 Ind Cas 543, Bunal Pershad v. Sılal Pershad.

Note 5

- (1915) A 1 R 1915 All 869 (371). 38 All 85. 31 Ind Cas 800, Ram Ugrah Pande v. Achraj Nath Pande.
 - (1936) A I R 1936 Pat 161 (162): 14 Pat 855; 161 Ind Cas 691, Panchs Mandal v. Gena Mander.
- (1923) A 1 R 1923 Raog 226 (226): 1 Rang 256: 76 Ind Cas 493, Ma Then Tur. v. Maung Ba Than.
- 3. (1911) 9 Ind Cas 157 (159) (Mad), Anjayya v. Bapaya.

Other Topics

1. History of the Article.—There was no Article corresponding to this in the Act of 1871. Section 599 of the Code of Civil Procedure of 1877 provided that an application for leave to appeal to Her Majesty in Council must ordinarily be made within six months from the date of the decree complained of By Section 2 of the Limitation Act XV of 1877, Section 579 of the Code of 1877 was repealed and by Article 177 all applications "for the admission of an appeal to Her Majesty in Council" had to be filed within six months of the date of the decree appealed against. The Civil Procedure Code of 1882 (Act XIV of 1892) however, re-enacted Section 599 of the Code of 1877 and the view was expressed in one case! that such re-enactment operated as a repeal of Article 177 of the Act of 1877 A contrary view was also expressed in the undermentioned case 2 By Section 57 of Act VII of 1898, Section 599 of the Code of 1882 was repealed and the conflict of views as to the applicability of Article 177 of the Limitation Act to applications for leave to appeal to the Privy Council was thereby removed.

The first column of the present Article follows more or less the wording of Order 45 Rule 2 of the Code of Civil Procedure, 1908, which runs as follows:

"Whoever desires to appeal to His Majesty in Council shall apply by petition to the Court whose decree is complained of "

As the Article stood originally, the period of limitation was six months. By Act 26 of 1920 the period of limitation was altered to minety days.

2. Scope.—This Article applies to applications for leave to appeal to His Majesty in Council Under Order 45 Rule 2 of the Civil Procedure Code, a person desiring to appeal to His Majesty in Council from a decree or final order passed by any Court must make an application to such Count for leave to appeal. This procedure has been made applicable also to certain orders passed under Special Acts Thus, the procedure has to be followed in appeals to His Majesty in Council from the judgment of the High Court under section 66 of the Indian Income.tax Act, 1922, and the party desirous of appealing

Article 179 - Note 1

Note 2

Article 179 Notes 1-2

 ^{(1884) 6} All 250 (251) 1894 All W N 71 (F B), Pazul-un-nissa Begam v Mulo

 ^{(1892) 15} All 14 (16, 17) 1892 All W N 152, In the matter of Petition of Sita Ram Kesho.

 ^{(1675) 15} Deng L R 221 (223) 2 Ind App 205 3 Suther 148 3 Sar 495
 (P C), Gajadhur Pershad v Wadous of Emam. 4th Bey (Granting of leave on application for review without application for leave was held ultra cirrs)

Article 179 Notes 2—3 from such judgment has to file an application for leave to appeal. This Article will apply to all such applications.²

Where there are two appeals from two decrees though they are decided by one judgment, a party desiring to appeal from both decrees must file two separata applications for leave to appeal within the period prescribed by this Article. Where in such a case a single application only was filed within time asking for leave to appeal against hoth the decrees, it was held that such application was had in law. The High Court, however, allowed the applicant to amend his application by restricting his prayer to one decree.³

The Article applies only to applications for leave to appeal made under the Code of Civil Procedure. It has no application to an application for leave to appeal in criminal cases.

Order 22 of the Civil Procedure Code does not apply to applications for leave to appeal and no question of limitation arises on the death of the applicant, any order for substitution being, however, subject to the rules of the Judicial Committee and such directions as may be given by their Lordships at the hearing of the appeal.

3. Starting point.—Time, under this Article, runs from the date of the decree. As has been eeen in Note 5 to Article 156 ante, the date of the decree is the data of the judgment and not the date on which the decree is actually drawn up and signed.

The amendment of the decree which does not have the effect of substituting a new judgment does not give a fresh starting point of limitation or after "the date of tha decree" as originally drawn up. But a decree passed on review is a fresh decree and time for an application for leave to appeal runs from the date of the fresh decree. Where the High Court sends down an issue for finding of

-ud-Din v. Gulam

Rabbana.]
2. See Note 8 to Article 156, ante, for a fuller discussion.

[See also (1899) 2 Oudh Cas 235 (239), Zinat Bibi v. Jehangir Bukhsh Kham.]

3 See Note 9 to Article 156, ante for a full discussion.

[See also (1924) A I R 1924 Lah 82 (82): 4 Lah 185: 75 Ind Cas 520, Naras Als v. Allu.

(1931] A I R 1931 Cal 823 (326) : 131 Ind Cas 258, Aditya Kumar v. Abinash Chandra.]

 ⁽¹⁹⁸²⁾ A I R. 1932 Cal 597 (587): 59 Cal 251: 199 Ind Cas 236, Commissioner of Incomertax, Bengal v. M. Shaw Wallace & Co.
 (1932) A I R. 1932 Lah 441 (42): 140 Ind Cas 70, Copal Singh v. Mrs. N.

Johnstone. (See also (1920) A I R 1920 Pat 267 (270) : 57 Ind Cas 312, Mahadeo

[[]See also (1970) A I R 1920 Pat 201 (270) : 51 Ind Cas 512, Manager Prasad v. Gajadhar Prasad.] 4. (1924) A I R 1924 Cal 333 (331) : 25 Cri L, Jour 1371 : 62 Ind Cas 763,

Phillip E. Billinghurst v. Emperor. 5. (1910) 4 Ind Cas 454 (456) (Cal), Jadunandan Koer v. Ramjiban Lal.

Note 3

the lower Court under Order 41 Rule 25 of the Civil Procedure Code and passes a decree on receipt of the finding, the order sending down the issue is not the final order and an application for leave to appeal can be made within ninety days of the final decree.4

Article 179 Notes 3-4

4. Extension of time.

Extension under Section 4 :- Where the Court is closed on the last day prescribed for the application, it may be presented on the next re-opening day, by virtue of Section 4, ante.1

Extension under Section 6 :- Section 6, ante, does not apply to applications contemplated by this Article and the period of limitation prescribed therefor cannot be extended by reason of any legal disability.2

Exclusion under Section 5:- Section 5 sub-section 2 of Act of 1877 does not apply to applications for leave to appeal to His Majesty in Council. It was accordingly held that time cannot be extended under this Section even if there was sufficient cause for the delay. This sub-section has now been amended in the present Act so as to make it applicable to applications for leave to appeal. As to the circumstances under which time may be extended under Section 5. see Notes to that Section and the undermentioned cases 4

Exclusion under Section 12: - Section 12 sub-section 2 of Act of 1877 does not apply to the applications contemplated by this Article and it was held that the applicant was not entitled to the exclusion of the time requisite for obtaining a copy of the decree

4. (1933) A I R 1933 Bom 251 (252): 145 Ind Cas 258, Jttan Lal Vrajrat v. Vraylal Pochalal

Note 4

- 1. (1871) 15 Suth W R 255 (256), Rajah Raj Kishen Singh v. Huro Soonduree
 - (1809) 12 Snth W R 203 (294). Luchmun Chunder Gir v Kales Churn Singh

[But see (1868) 1 Beng L R O C 39 (40), Tamtaco : Shinner (Six months' period expiring during holidays-Application made on the re-opening day-Leave not granted)]

- 2. (1891) 18 Mad 484 (486), Thuras Rasah v. Jasnelabdeen Routhan.
- (1918) A I R 1918 Oudh 163 (166) 46 Ind Cas 68, Narendra Bahadur Singh v. Oudh Commercial Dank of Fyzabad 3 (1892) 15 All 14 (19) 1892 All W N 152, In the matter of petition of Sita
 - Ram Kesho
 - (1906) 28 All 591 (392, 393) 1906 All W N 55 3 All L Jour 165, Shib Singh v Gandharp Singh.
 - (1895) 19 Bom 801 (302), Moroba Ramchandra v. Ghanasham Nillant
- 4. (1923) A I R 1923 All 536 (537) 76 Ind Cas 375, Dec Indar Singh v. Khusha Ram (Sudden illness)
 - (1924) A I R 1924 Bom 399 (407, 410) · 48 Bom 442 80 Ind Cas 862 (F B), Nagindas Motilal v Nilaji Moroba (Mistaken advice of pleader and acting in good faith.) (1021) A I R 1021 Pat 175 (176) . 6 Pat L Jour 350 62 Ind Cas 649 (F B).
 - Justindranath Sarkar v Lodna Colliery Co Ltd. (Benne misled by the longstanding practice of Court)
 - (1929) A I R 1929 Sind 206 (207) 118 Ind Cas 212 24 Sind L R 108. Jhamandas v. Mt Bibi Aishan. (Negligence of parts-Time cannot Le extended.)

Article 179 Note 4

appealed from.5 This sub-section has also been amended in the present Act so as to make it applicable to applications for leave to appeal. But it is only the time requisite for obtaining a copy of the decree appealed against that can be excluded in computing the period prescribed by this Article. There is a conflict of opinion as to whether the time requisite in obtaining the copy of the judgment can be excluded in computing such period. See Notes 28 and 25 to Section 12, ante.

Article 180

180. By a purchaser | Three years. | When the sale of immoveable property at a sale in execution of a decree for delivery of possession.

becomes absolute.

Sunopsis

- 1. Legislative changes.
- 2. Scope of the Article.
- 3. "By a purchaser."
- 4. Starting point.
- 5. Extension and exclusion of time.

6. Second application.

1. Legislative changes. - This Article was introduced for the first time in 1908. Before the 1908 Act it had been held that applications under S 318 of the Code of 1882 corresponding to the present

(1925) A I R 1925 Bom 137 (187): 4 Rustomys Mehta v Hasham I

limitation for an application for the time taken up for review against should be excluded.)

(1925) A I R 1925 Cal 253 (254) . 80 Ind Cas 786, Kailash Chandra Nag

v. Bejoy Chandra Nag. (Do.) (1924) A I R 1924 Lah 225 (226) . 77 Ind Cas 869 : 4 Lah 445, Nehi v.

Chajju Ram. 5. (1877) I All 644 (C47), Jawahir Lal v. Narain Das

(1906) 28 AH 591 (392, 393): 1906 AH W N 55: 3 AH L Jour 165, Shib Singh v. Ghandarp Singh.

(1895) 19 Bom 301 (302), Moroba Ramchandra v. Ghanasham Nilhani. (1887) 10 Mad 873 (377), Lalshmanan v. Peryasamy.

(1892) 15 Mad 169 (169), Anderson v. Persasams. 6. (1915) A I R 1915 AH 335 (336) : 38 AH 82 : 31 Ind Cas 906, Ram Sarup

v. Jaswant Ras. (1914) A I R 1914 Cal 679 (681) : 42 Cal 35 : 24 Ind Cas 273, Abdullah

Hussam v. . inanda Chandra Roy. (1928) A I R 1928 Nag 63 (61): 105 Ind Cas 852 . 24 Nag L R 97, Gulab-changs v. Ghulab Singh.

[See however (1935) A I R 1935 Lah 841 (341): 158 Ind Cas 120. Hars Ham v. Prem Nath. (It was held that if decree is not necessary to be filed, then no exclusion will be made for obtaining the copy. This is not correct. See Note 7 to Section 12. ante II

Article 180 Notes 1-2

Rule 95 of Order 21, were governed by Article 178 of the Act of 1877 corresponding to the present Article 181, and that time for such applications ran from the date when the certificate of sale was granted.1 In the undermentioned cases at was held that time ran from the confirmation of the sale. It was also held by the High Court of Calcutta in a case under Section 319 of the old Code that it was the duty of the Court to order symbolical delivery of possession and that there was no period of limitation for delivery of such nossession 3

The insertion of the words "on the application of the purchaser" in Rules 95 and 96 of Order 21 of the Code and the enactment of this new Article have made it clear that such applications should be made within three years from the date when the sale becomes absolute.

2. Scope of the Article. - This Article governs an application made under Order 21 Rules 95 and 96 of the Code of Civil Procedure. by a purchaser of immovable property at a sale in execution of a decree for delivery of possession

It, however, applies only to applications A suit for the same relief is governed, for purposes of limitation, by Article 138 ante. Where the purchaser is a stranger, he is not bound to apply under Order 21 Rule 95, but may institute a suit for possession for which the period of limitation is prescribed by Article 138 1 But there is a conflict of omnion as to the maintainability of the suit when the decree-holder is himself the auction-purchaser. According to the High Courts of Madras,2 Calcutta,3 and the Courts of the Judicial

Article 180 - Note 1

...

- 1 (1879) 3 Bom 433 (486) 4 Ind Jur 187, Basapa v Marya. (1884) 8 Bom 27 (298) 8 Ind Jur 578, Haumantrav Pandurang v Subaji (1892) 17 Bom 228 (229), Kashinath Trimbak v Duming Zuran
- (1909) 1 Ind Cas 993 (999) 32 Mad 136, Sultan Salab Marahayar v. Chidambaram Chettiar
- 2 (1908) 30 All 390 (392) 5 All L Jour 516 1903 All W N 162, Rannt Smah v. Baldeo Singh
- 3. (1918) A I R 1918 Cal 545 (546) 40 Ind Cas 605 (606), Harish Chandia Roy v. Sarat Chandra

Note 2

Bhanoban Dm Panden Chunder Nath Pal 126 Ind Cas 849, Pain Kumar

(1931) A I R 1991 Pat 241 (253) 183 1nd Cas 337 . 10 Pat 670 (F B), Tribens Prasad v Runasray Prasad

- 2 (1933) A I R 1933 Mad 569 (570) 144 Ind Cas 472, Mahomed Bouther v.
- Maideen Pichai Sahib (1927) A I R 1927 Mad 288 (290) 50 Mad 403 99 Ind Cas 677, Kannau v
 - Attulla Han (1901) 25 Mad 529 (532) 12 Mad L Jour 1, Kasmatha Ayyar v Uthumansa Rowthan
 - (1904) 28 Mad 87 (89) 14 Mad L Jour 474, Sandhu Taraganar v Hussain Sahib
 - (1902) 26 Mrd 740 (741) 13 Mad L Jour 237, Kattayat Pathumaya v. Raman Menon.
- 3, (1926) A I R 1926 Cal 798 (802) 53 Cal 781 · 95 Ind Cas 494 (F D), Karlash Chandra v Gopal Chandra.

Article 180 Notes 2-3

Commissioners of Nagpur⁴ and Sind, 5 a question relating to delivery of possession is one relatiog to the execution, discharge or satisfaction of the decree, and hence where the decree-holder purchases the property in court-auction, his remedy for recovery of possession is only hy way of an application cootemplated by Article 180 and a separate suit will not he. The High Courts of Allahabad. Bombay. Patna, Lahore and Raogooo, to and the Chief Court of Oudh 11 bold, on the other hand, that the remedies are concurrent and that the purchaser has an additional remedy by suit.

A purchaser at a court sale of the interest of an undivided member of a joint Hindu family acquires only a right to sue for partition and for delivery of what may be allotted as the share of such undivided member. He cannot apply under Order 21 Rule 95.13

- 3. "By a purchaser." The word 'purchaser' includes both a decree-holder purchaser and a stranger purchaser. 1 See also Note 2
 - (1930) A I R 1930 Cal 586 (587) : 129 Ind Cas 244, Jaday Chandra v. Akrur Chandra
 - (1900) 27 Cal 34 (37) : 4 Cal W N 417. Madhusudan Das v. Gobinda Pria
 - Chowdhurans. (1934) A I R 1934 Cal 541 (542); 150 Ind Cas 813, Indra Bhusan v. Ram
- Kissen Bindhani. 4. (1927) A I R 1927 Nag 294 (295) : 103 Ind Cas 335, Balafi Kashinath v.
- Anandrao. 5. (1925) A I R 1925 Sind 171 (173) : 78 Ind Cas 930 : 18 Sind L R 84, Persmal v Sanahar.
- 6. (1907) 29 All 463 (466) . 4 All L Jour 434 : 1907 All W N 181, Sheo Narain
- v. Nur Muhammad. (1900) 1 Ind Cas 416 (424) : 31 All 82 (F B), Mt. Bhagwats v. Banwari Lal.
- (1928) A I R 1928 All 368 (370) : 50 All 670 : 115 Ind Cas 869, Mohan Rasa Khan v. Haider Bakhin. 7. (1898) 22 Bom 939 (944), Shivingam Sahebram v. Waman Narayan Joshi.
- (1924) A I R 1924 Bom 527 (528) : 86 Ind Cas 503, Lakshman Sadashiv v. Gouind Ganesh.
- (1930) A I R 1930 Bom 375 (377) : 125 Ind Cas 703 : 54 Bom 479, Hiralal Mohanlal v Ramchandra Kundanmal.
- 8. (1919) A I R 1919 Pat 297 (304) : 52 Ind Cas 711, Sridhar Sardar v. Jageshwar Singh Maha Patra.
 - (1918) A I R 1918 Pat 546 (546, 547) : 47 Ind Cas 844, Jagesur Sungh v. Sridhar Sardar.
- (1930) A I R 1930 Pat 308 (310) : 9 Pat 332 : 125 Ind Cas 516, Jadab Chandra v. Rameshwar Marwars.
- 9. (1918) A I R 1918 Lah 204 (207, 210) : 1918 Pun Re No. 8 : 44 Ind Cas 169, Chotha Ram v. Mt. Karmon Bai.
- 10 (1930) A I R 1930 Rang 61 (63): 8 Rang 162: 126 Ind Cas 209, J.A. Martin v. S. M. Hashim. (1930) A I R 1930 Rang 281 (282) : 127 Ind Cas 476, Ma Hla May v. Nya
 - unglebin Urban Co-operative Bank Ltd.
- 11. (1928) A I R 1928 Oudh 199 (203) . 3 Luck 182 : 110 Ind Cas 83 (F B), Gaya Baksh Singh v Razendra Bahadur.

.--

Note 3 1 (1935) A I R 1935 Mad 803 (807) : 59 Mad 893 : 159 Ind Cas 279 (F B), Abdul Aris v. Chokkan Chettiar.

above. A transferee from an auction-purchaser is competent to apply under Order 21 Rules 95 and 96 of the Civil Procedure Code and his application also would be governed by this Article.2

Article 180 Notes 3-5

4. Starting point. - Time, under this Article, runs from the date when the sale becomes absolute. In Chandra Mans v. Anarran Bib. 1 their Lordships of the Privy Council observed that in construing the words "when the sale becomes absolute" in Article 180, regard must be had not only to the provisions of Order 21 Rule 92 sub-rule 1, but also to the other materia) Sections and Orders of the Code including those which relate to appeals from orders made under Order 21 Rule 92 sub-rule 1, and that consequently, where there has been an appeal from an order of the Judge disallowing the application to set aside the sale, the sale will not become absolute within the meaning of Article 180 until the disposal of the appeal. even though the Court of first instance may have confirmed the sale. as it was bound to do, when it decided to desallow the application

There is no provision of law for excluding in favour of the auction purchaser the period of the pendency of a suit filed by tho udgment-debtor to set aside the sale.3

5. Extension and exclusion of time. - Neither Section 5 por Section 14 of the Limitation Act applies to an application governed by this Article. Section 15 also does not apply as that Section refers to a suit or an application for execution, and an application for

2 (1918) A I R 1918 All 405 (405) : 40 All 216 . 42 Ind Cas 936, Budhu Many w Bhagiraths Kuar.

Note 4

1 (1934) A I R 1934 P C 134 (136) 6I Ind App 218 61 Cal 945 150 Ind Cas 11 (P C) (Reversing the decision in A I R 1932 Cal 75)

[See (1930) A I R 1930 Cal 86 (89) 56 Cal 608 120 Ind Cas 107. Neckbar v Pralash Nag (This case must be deemed to be overruled by A I R 1931 P C 131)

(See also (1935) A I R 1935 Cal 333 (335), 62 Cal 66 158 Ind Cas 191, Jateendra Chandra . Rebatec Mohan Das (When, by reason of a competent Court, there is a cancellation of the cause of action for delivery, operating to suspend the rights of the auction purchaser, he is entitled, on the removal of such cancellation by a Court of appeal, to await a fresh cause of action, which arises by reason thereof)

(1933) A I R 1933 Cal 311 (311) 147 1nd Cas 981, Chhogan Lal v. Behart Lal.

- (1927) A I R 1927 Mad 391 (393) 99 Ind Cas 632. Thanvamuthu v. Odanappan.
- (1920) A I R 1920 Mad 1 (7) 43 Mad 185 54 Ind Cas 66 (F B), Muthin Korahs Chetty v Mahamad Madar Animal
- (1914) A I R 1914 Cal 893 (893) 22 Ind Cas 497, Janah Prosad v. Net Ram (Appeal against confirmation-Compromise-Instal. ment proment agreed to Defullt clause - Launtation counts from date of default and not from date of first confirmation of sale]]
- 2. (1926) A I R 1926 Mad 857 (859) . 96 Ind Cas 657, Sornam Pillat v Ttrutarhiperumal Pillar

Note 5

1. (1932) A I R 1932 Cal 75 (76) : 134 Ind Cas 1188. Sm Angrean Dibt v. Chandraman: Shaka.

Article 180 Notes 5—6 delivery of possession by an auction-purchaser, although it may be treated as an application in an execution proceeding, cannot be treated as an application for execution.²

6. Second application. - An order for delivery of possession is not a decree for possession and therefore cannot be kent alive by periodical applications 1 Where an application for delivery of possession filed in time is dismissed or struck off or closed for statistical purposes, it will be deemed to be pending and a subsequent application for delivery, though made beyond three years after the confirmation of the sale, will be considered as a reminder to tho Court to continue the pending application.2 Where on an application for delivery an order for delivery is passed, but the property is not delivered owing to no fault of the applicant, but to the obstruction of the judgment-debtor and the petition is therefore dismissed, the dismissal must be considered to be one for statistical purposes only,3 But, where the delivery is not made owing to the lackes of the applicant himself, and the petition is dismissed, the dismissal cannot be considered to be one for statistical purposes and the subsequent application for delivery can only be considered as a fresh application. Where the order on an application filed in time is not on merits and does not amount to refusal of the relief claimed and does not therefore compel the applicant to appeal, a subsequent application within a year of the first has been held to be in continuation of the first and hence in time.5

2. (1935) A I R 1935 Cal 333 (331): 62 Cal 66: 158 Ind Cas 191, Jaleendra Chandra v. Babatee Mohan Das.

(1919) A I R 1919 Mad 1001 (1002): 43 Ind Cas 155, Subbayya v. Venhataramayya. (33 Mad 196 and A I R 1917 Mad 979, Followed.)

Note 6

"undara Rao v.

ania Chelliar v.

Angappa .1sars

(1933) A I R 1933 Mad 745 (748) · 145 Ind Cas 397, Apparoo Namar v. Lakshmana Reddi., (Closed.)

 (1933) A I R 1933 Mud 745 (748) . 145 Ind Cas 397, Appareo Namar v. Lakshmana Reddi. (See Per Oldfield Ps. opinion in A I R 1919 Mad 1001.)

(1919) A I R 1919 Mad 1001 (1903) : 43 Ind C is 155, Subbayya v. Venkataramaya. (See Per Oldfield J.)

y, Paidi-

9, (1935) A I R 1935 Mad 807 (808) 59 Mad 897 159 Ind Cis 279 (FB), Abdul Ans v Cheklan Chethar

[See also (1919) A I R 1919 Pat 425 (430) 49 Ind Cas 150 (F B).

Raghunandan v

not the decree hok of possession and

fresh wait of possession within the period of limitation allowed for such application without applying under Order 21 Itale 97.)]

181.* Applications Three years. for which no period of limitation is provided elsewhere in this schedule or by section 48 of the Code of Civil Procedure, 1908.

When the right to apply accrues.

Article 181

Sunopsis

- 1. Legislative changes.
 - 2. Scope.
- 3. "Or by section 48 of the Code of Civil Procedure, 1908."
- 4. Application for final decree in mortgage suits under Order 34 Rules 3 and 5. Civil Procedure Code.
- 5. Application for final decree in redemption suits Order 34 Rule 8, Civil Procedure Code.
- 6. Application for personal decree Order 34 Rule 6, Civli Procedure Code.
- 7. Application for restitution Section 144. Civil Procedure Code.
- 8. Application for execution.
- 9. Application to set aside sale.
- 10. Applications under Section 47. Civil Procedure Code.
- 11. Application for refund of purchase money Order 21 Rule 93, Civil Procedure Code.
- 12. Application by auction-purchaser for possession Order 21 Rule 95. Civil Procedure Code.
- 13. Application to bring on record legal representatives.
- 14. Application to rescind leave to suc.
- 45. Miscellaneous applications under the Civil Procedure Code.
- 16. Application for flual decree in partition and partnership sults.
- 17. Application for ascertainment of mesne profits.
- 18. Certification of payment by decree-holder under Order 21 Rule 2, Civil Procedure Code.
 - 19. Application to amend decree.

Act of 1877

178 - Applications for which no period of Three years. When the right to limitation is provided elsewhere in this schedule, or by the Code of Civil Procedure. section 230.

apple accrues.

Acts of 1671 and 1659

Article 181 Notes 1-2

- 20. Application to add parties.
- 21. Application for sale certificate.
- 22. Applications under other Acts.
- 23. Applications under the Code of Criminal Procedure.
- 24. Enlargement of time.

Other Topics

Applicability of this Article—Test ... See Note 2, Pts. 5, 6
Applicability of Article to applications nuder O. 21 R. 100, C. P. C. ... See Note 10
See Note 10

See Note 10
Application in pending snit—Article not applicable ... See Note 16, Pt. 1
Application to do act of purely ministerial character—Article does not apply ...
See Note 2, Pts. 4, 4a; Note 21

Application under Original Side Rules of High Court—Article not applicable See Note 2, F.N. [29, [3]]

Applications under Provincial Insolvency Act: See Note 2, F.N. [3], Note 22, Pt. 1

Article applies only to applications under C, P. C. See Note 2, Ft. 3

 Legislative changes. — There was no provision in the Limitation Acts of 1859 and 1871 corresponding to this Article. Applications which would now fall under this Article were not then subject to any rule of limitation. See also the undermentioned cases.¹

In the Act of 1877, Article 178 corresponding to this Article was introduced for the first time.

Scope. — The language of the Article makes it clear that
it is restricted to applications, and only to such applications as ere
not provided for elsewhere in the First Schedule of this Act or
by Section 48 of the Code of Civil Procedure.

An examination of the Articles of the First Schedule relating to applications shows that in every me of those cases, the application is made under the Code of Givi Procedure. It has been held that a residuary Article like the present one must be construed cjuxdem generis with the other Articles dealing with applications. It would follow that this Article also applies only to applications which are

Article 181 - Note 1

1. (1874) 22 Suth W R 211 (211), Muthoora Pershad Singh v. Mohunt Shumboo Geer.

(1879) 4 Cal L R 577 (579, 580), Allıj Hossein v. Mushur Hossein.

Note 2

- 1. (1883) 5 All 297 (298) : 1883 All W N 41, Musafir Husain v. Ali Husain.
 - (It does not apply to suits.) (1906) 33 Cal 881 (883, 836) : 4 Cal L Jour 162, Bhajahari Saha v. Behary
- 2. (1888) 10 All 350 (353) : 1888 All W N 92 : 19 Ind Jur 96, Queen-Emfress v. Ajudhia Singh.
- (1880) 7 Bom 213 (214), Bai Manelbai v. Manekji Karasji.
- (1923) A 1 R 1923 Bom 268 (269) : 77 Ind Cas 497, Thana Zalalji v. Dhana Jachris.
- (1881) 6 Cal 707 (708): 8 Cal L R 52: 8 Ind Jour 474, In the matter of the Petition of Islan Chunder Roy.

Article 181 Note 2

made under the Code of Civil Procedure. It is not, however, every application under the Code that would be necessarily governed by this Article. Where it is the duty of the Court to do a particular thing suo motus independently of any application that may be made, or where the thing to be done is purely of a ministerial character, an application though made is not governed by this Article. Thus, a court is bound, whether an application is or is not made, to pass a decree in accordance with the judgment or to dispose of a pending suit. No application need be made asking the Court to do its duty. If such an application is made, it would be considered to be merely If such an application is made, it would be considered to be merely

- (1919) A I R 1919 Cal 345 (346). 46 Cal 249 · 51 Ind Cas 941, Lakhtmons Dasss v. Dusyendra Nath (Application under R. 27, Ch. 38 of tha Original Side Rule, Calcutts High Court, is not governed by Art. 181.)
 - Original Side Rules, Calcutta High Court, is not governed by Art 181.) (1694) 17 Mad 379 (381), Granamuthu Upadesi v. Vana Koil Pillas Nadan.
 - (1927) A I R 1927 Nag 262 (263) · 102 Ind Cas 543, Balajs v. Gopal Mali (1894) 16 All 23 (25) 1893 All W N 199, Ranber Singh v. Drigpal,
- See also Note 31 to Preamble.
- (1933) AIR 1933 PC 63 (64), 60 Ind App 13 142 Ind Cas 7 54 All 1067
 (P.C), Hansraj Gupta Dehra Dun Mussorie Electric Tramuay Co, Ltd
 - (1920) A I R 1920 Mad 974 (974) 60 Ind Cas 123, Duranyya Solagan v. Fenkatarana Natcker (Application under Sec. 36, Provincial Insolvency Act of 1907)
 - (1908) 32 Bom 1 (5) 9 Bom L R 508, Wadsa Gandhy & Co. v. Purshottum. (Under R 859 of Bombay High Court Rules)
 - (1921) À I R 1921 Cal 67 (70) 48 Cal 817 · 66 Ind Cas 209, Narendro Lal Khan v. Tarubala Dassa (Under R 69, Ch. 33 of the Original Side Rules of the Calcutta High Conet)
 - [1901] 1901 All W N 46 (47), Drijmohan Singh v. Kithan Mohan Singh. (Under R 8 D of the Allahabad High Court dated 18th January 1899)
 - (1883) 7 Bom 546 (551), Collector of Broach v Desas Raghunath. (Proceedings under Dhagdari Act, Bombay Act 5 of 1862)
 - (1907) 34 Cai 672 (675) 6 Cai L Jour 119 11 Cai W N 674, Rahamat Karım v Abdul harım (See also (1907) 18 All 12 (15) 1895 All W N 136, Connell v. Hima-
 - (See also (1995) 18 All 12 (15) 1895 All W N 136, Connell v. Himalaya Bank Lid (Application to proceed under S 214 of Act 6 of 1882)
- (1895) 20 Bom 543 (546), Queen-Empress v Nageshappa Pas]
 4. (1916) A I R 1916 Cal 231 (232) 29 Ind Cas 211, Bens Singh v Barhamdeo Sinch.
- (1936) A I R 1936 P C 204 (206) 59 Mad 910 163 Ind Gas 4: 63 Ind App 304 (P C), Venhala Jagannath Rao v Venhala Lumara Mahipati Surya Rao (The law does not presente any special period for an application for an order of confirmation of court-side)
- (1906) 30 Pom 415 (420) 8 Born L R 218, Balan v Kushaba
- [1881] 5 Cal 60 (63) 6 Cal L R 345, Gound Chunder Goswams v. Rungunmony (Application to transfer a case from one Board to another, to transfer a case to the bottom of the Board, change of attorneys and so forth—Acts of munisterial character)
- (1881) 4 Mad 172 (173), Kylasa Goundan v. Ramasamy Ayyan
- (1882) 6 Dom 586 (587) 7 Ind Jur 35, Vithal Janardhan v. Vithojirav Putlajira: (Acts of ministenal character)

money d to s made

(1887) 9 All 361 (365) 1887 All W N 79, Darbo v Kesho Rai (1923) A I R 1923 Bom 268 (269) 77 Ind Cas 497, Thana Zalalji v. Dhana Jauketi. Article 181 Notes 2—3 drawing the attention of the Court to do what it is bound to do, and would not be governed by this Article. 43

The test therefore to see whether this Article applies to a particular application is:

Firstly, whether the application is made under the Civil Procedure Code, that is, authorized by the provisions of the Civil Procedure Code, and secondly, whether the Court is not bound to exercise its powers and do the particular thing, unless moved hy an application.

Column 3 of the Article providing that time runs from the date when the right to apply accrues is only the expression of the hroad common law principle that for the purpose of any particular application, time is to run from the moment at which the applicant first had the right to make it.?

3. "Or by section 48 of the Code of Civil Procedure, 1908."— The words "or hy section 48 of the Code of Civil Procedure, 1908" occur not only in this Article but also in Article 182, infra, the first column of which runs as follows:—

"For the execution of a decree or order of any Civil Court not provided for by article 183 or by section 48 of the Code of Civil Procedure, 1908."

Taken literally, Article 182 could not apply to any application for the execution of a decree except a decree for injunction, inasmuch as every decree except a decree for injunction is provided for by Section 48 of the Code of Civil Procedure. It has, therefore, heae held by the High Court of Madras that the words must be read with Section 3 of the Act, that the periods of limitation set out in the different Articles are only to be taken in reference to the question of dismissal and that this Article should consequently he read as follows:—

"Application for which no period of limitation for the purpose of dismissal is provided elsewhere in this schedule or hy section 48. Civil Procedure Code."

4a (1883) 7 Bom SIG (322) . 7 Ind Jur 609, Ishwardas Jagjicandas v. Doshai. (Application to pass judgment in terms of an award)

(1916) A I R 1916 Cal 231 (232) : 28 Ind Cas 211, Bens Singh v. Barhamdeo

Singh. (1914) A I R 1914 Cal 29 (32): 20 Ind Cas 910, Barhamdat Missir v. Krishna Sahay. (Under S 153, Ben. Ten. Act, to have rent accessed)

 (1920) A I R 1920 Lah 51 (53): 1 Lah 167: 55 Ind Cas 820, Hindustan Bank, Ltd. v. Mehraj Din. (Art. 181, Limitation Act, refers to all applications for the making of which the Civil Procedure Code gives authority 1

6, (1882) 4 Mad 172 (173), Kylasa Goundan v. Ramasamy Ayyan.

 (1933) A I R 1933 Cal 251 (253): 60 Cal 19: 143 Ind Cas 679, Pradyumnahumar Mallik v. Gorendra Mallik.

(1929) A I R 1929 Cal 646 (649): 56 Cal 61: 117 Ind Cas 543 (S B), Hari Mohan v. Parameshwar Sahu.

Note 3

(1930) A I R 1930 Mad 995 (998): 51 Mad 806 · 128 Ind Cas 713, Descandaman Janamalar, Dentar v. Eaju Pillai.

Article 181 Note 4

4. Applications for final decree in mortgage suits under Order 34 Rules 3 and 5, Givil Procedure Code. — Before the passing of the Code of Civil Procedure, 1908, it was held in one class of cases! that an application for an order absolute for sale under Sections 87 and 89 of the Transfer of Property Act (4 of 1882) was one for an order for sale and would, therefore, be governed by Article 179 of the Act of 1877 (corresponding to the present Art. 182). In another class of cases, the view was held that Article 179 of the Act of 1877 would not apply as there was no decree capable of execution and that consequently Article 178 (now Article 181) would apply. A third view expressed was that even Article 178 would not apply inasmuch as an application for an order absolute was not one "under the Code of Civil Procedure." 3

Note 4

- (1914) A I R 1914 P C 66 (67) · 36 All 250 : 23 Ind Cas 649 (P C), Chandri Abdul Majid v. Jauahir Lal.
 - (1914) A I E 1914 P C 65 (66): 36 All 284 41 Ind App 104. 23 Ind Cas 644 (P C), Batuk Nath v Mt., Munns Det.
 - (1893) 20 All 302 (304) 1893 All W N 40, Chunus Lal v. Harnam Das.
 - (1898) 20 All 357 (358) 1898 All W N 71, Parmeshra Lal v. Mohan Lal. (1907) 29 All 279 (281) . 1907 All W N 45 4 All L Jour 145, Sra Ram v.
 - Het Ram
 - (1899) 23 Bom 614 (653) 1 Bom L R 136, Bhaguan v. Ganu.
 - (1916) A I R 1916 Mad 288 (290) 89 Mad 541 29 Ind Cas 237, Mahammad Husam v. Abdul Kareem.
 - (1900) 25 Mad 244 (288) · 12 Mad L Jour 279 (F B), Mallikarjanudu Selis v. Lingamurihi Pantulu (Per Bhashyam Ayyangar, J.)
 - (1920) A I R 1920 Mad 286 (288) . 56 Ind Cas 568, Ganapathia Pillar v. Gopala Lyer. (Period of limitation obtaining under the old Act is not
 - taken away by the passing of the new Civil Procedure Code.)
 (1921) A I R 1921 Mad 126 (128, 131) 61 Ind Cas 979, Vesuanatha Sastre
 - v Sitalaksims Ammai (Do) (1917) A I R 1917 Mad 315 (316) 32 Ind Cas 39, Balası Rao v. Harsrama
 - Chetty (Do)
 (1919) A I R 1919 Mad 969 (970) 48 Ind Cas 782, Ramaswams Reddy v.
 - Schkappa Redd: (Do)
 (1893-1900) 1893-1900 Low Dur Rul 588 (590), Ayahanoo Padayach: v.
 - R M A. R Mutu Curpen Chetty.

 (See also (1911) 9 Ind Cas 337 (338) . 14 Oudh Cas 10, Jageshar Singh
 - See also (1911) I find Cas 351 (308) 14 Ouda Cas 10, Jageshar Sing Shagwan Bakhish Singh]
 2. (1902) 24 All 542 (546) 1902 All W N 160, Als Ahmad v Naziran Bibi.
 - (1905) 27 All 625 (628) 2 All L Jour 371 1905 All W N 136, Baldeo Prasad v. Ibn Haidar
 - (1904) 1 All L Jour 15 (17), Udit Narain \ Jagannath \
 (1903) 26 Mad 780 (792) 13 Mad L Jour 412, Rungiah Goundan & Co v
 - Nanjappa Row (1908) 31 Mad 68 (69) 3 Mad L Tim 254 17 Mad L Jour 596, Ramayyan
 - v Kadır Bacha Sahıb [See also (1914) A I R 1914 Mad 15 (16) 22 Ind Cas 40, Ramanna v. Narayanasınını 1
 - 3. (1895) 22 Cal 924 (927), Teluch Songh v Parsoteen Pershad
 - (1894) 16 All 23 (25) 1893 All W N 198, Banber Singh v Drigpal
 - (1903) 16 C P L R 114 (116), Jaka Patel v. Mt Jamna
 - (1892) 5 C P L R 61 (62), Tallappa Wans v Dattu Kotual (1910) 6 Ind Cay 587 (539) 37 Cal 796, Madhubmons Dass v. Pamela
 - (1903) 5 Bom L R 540 (541), Ganu v. Narayan Vulhal
 - (1910) 8 Ind Cas 986 (987) (Low Bur), Ahmed Als v. Manng Ton,

Article 181 Note 4

With a view to put an eod to this conflict of decisions, it has now been provided that the application which follows a preliminary decree for sale or foreclosure is out for so order for sale, but for a decree for sale and the relevant provisions as to mortgage suits have been removed from the Transfer of Property Act to the Civil Procedure Code, so that it is no longer possible to contend that such an application is not one under that Code. An application under Order 34 Rules 3 and 5, Civil Procedure Code, is an application in the suit itself and not one for execution.5 Uoder those Rules the plaiotiff has to make an application for a final decree. Therefore, ao application for a final decree in a suit for sale or foreclosure is governed by this Article. Even where the mortgage suit is on the Original Side of a Chartered High Court, the application would be governed by this Article and not by Article 183 infra.6 The reason is that the application is not one to enforce a preliminary decree within the meaning of Article 183 infra. This Article will also apply to an application in respect of a compromise decree, where such doored contemplates the receipt of a feel degree 9

•	• -				700	* **	٠,.		27 Ind Ca
				. •				Muke	rjs.
	٠		••				٠.	iads T	enkatiah 1
(1918)	A I	R 19:	18 Nag	63 (64) .	15 Nag L F	86:46	Ind C	as 934, T	*ınayak Ra
	(Se	e also	(1916)	A I R 19 ndeo Sin	16 Cal 231 (233):	28 Ind	Cas 211	Bens Sing)
			Derma.		3	:	• • •	L Jou	e 864, Bale
								177 I:	1d Cas 470
	."	:		•				(S B)	. Gajadhar
••		÷	A 34. 3			n., 7r	DAHA	lhiram	n Naidu v.
				٠.					kshmi
					•				. Bala-
					••			-	
	•				:	·			. 1gdish
									ımalı
									909
									. e and

9 (1917) A I R 1917 Cal 175 (175): 37 Ind Cas 802, Sashi Dhusan v. Pratur Chandra. (Convent decree for forcelosure)

v. Pamela Lambert. (Obster.)]

Article 181.)]

to enforce a final decree is governed by Article 182 and not by

· ::: Ind Cas 781. M. A. L.

(But see (1910) 6 Ind Cas 537 (511) : 87 Cal 796, Madhab Moni Dari

Time for an application for a final decree under Order 34 Rules 3 and 5, Civil Procedure Code, starts from "when the right to apply accrues," that is to say, from the day fixed in the preliminary decree for payment of the mortgage money. When time has once begun to run, it cannot be suspended by any proceedings in any Court, such as a suit in which the title of the mortgager to the mortgaged property is in question. To on account of the pendency of proceedings to set axide the preliminary decree passed exparte, 12 nuless an injunction or an order of stay is obtained from the proper Court. 12 As to calargement of time under the relevant Sections, see Note 24 Arfra. Where a preliminary decree has been amended on account of some error in respect of the amount declared to be due, the date of such amendment cannot furnish a fresh starting point for an application

- (1923) A I R 1923 All 29 (29) 70 Ind Cas 840, Baledeo Das v. Psiambar, (1917) A I R 1917 All 119 (119); 39 All 532; 40 Ind Cas 424, Ramps Lai v.
- Karan Singh. (1914) A I R 1914 Bom 263 (283) - 38 Bom 32 21 Ind Cas 318, Daito Almaram v Shankar Datlatrawa.
- 10 (1923) A I R 1923 All 22 (22) 69 Ind Cas 199, Ramachandar v. Jasmal.
- (1922) A I R 1922 Mad 85 (66) 69 Ind Cas 366, Mummads Venkatiah v. Venkata Subbiah.
 - (1918) A I R 1918 All 295 (296) . 43 Ind Cas 518 . 40 All 235, Ahmed Khan r. Mt. Gaura.
 - (1919) A I R 1919 Pat 134 (134) : 50 Ind Cas 544 : 4 Pat L Jour 523, Ras Behars Singh v. Junan Lal.
 - (1923) A I R 1923 Sind 14 (15) 73 Ind Cas 311: 17 Sind L R 255, Saker-chand Narsidas v. Yaccob. (An application put in as one for execution cannot be treated as one for final decree)
 - (1938) A I R 1938 Oddh 112 (118) 173 Ind Cas 956, Ram Dutta v. Mahpat Singh (Freliminar) deeree on basis of compromise-Amonin 193able in 193aliments—On default of any one instalment, whole unband amount becoming payable and decree bolder entitled to obtain hall decree—Decree holder held entitled to apply for final decree on any default and not necessarily on the first default)
 - (1914) A I R 1914 Bom 263 (263) 21 Ind Cas 318 (319) 33 Bom 32, Batto Atamramy, Shankar Dattairaya, (Instalment decree)
 - (1913) 18 Ind Cas 731 (732); 35 All 178, Badrs Narayan v. Eunji Behars Lal. (Do.)
 - (1918) A I R 1918 Bom 217 (219) 42 Bom 309 46 Ind Cas 107, Naraing Rao v. Banda Krushna (Decree before 1903—Article 181 applied and right to apply accrued only on the coming into force of the new Civil Procedure Code)
 - (1923) A I R 1923 All 29 (80) 70 Ind Cas 810, Baldeo Das v Palamber, (Even where there is a condition in the decree that until one judgment-debtor's share is found insufficient, no steps are to be taken against the other, right to apply for final decree accurs at the same time.)
 - (1926) A I R 1926 Oudh 12 (12) 91 Ind Cas 617, Rudra Pratab Singh v Sura; Kuer.
- (1925) A I R 1925 Mad 331 (338): 85 Ind Cas 272, Ammathays Ammal v. Sugrama Pellas.
- (1936) 1936 Mad W N 146 (146), Thangal Rowther v. Nama Muhammad Rowther.
 - (1925) A I R 1925 Cal 1030 (1031) . 87 Ind Cas 746, Mahamed Eamel v. Ahmad Als.
- 12a (1925) A I R 1925 Mad 831 (338) 85 Ind Cas 272, Annathays Annal v. Suarama Pellas.

Article 181 Note 4

for final decree.13

Where there has been an appeal from a preliminary decree and the Appellate Court has not extended the time for payment, the period of three years for au application for a final decree runs from the date of the decree of the Appellate Court and not from the date fixed for payment in the preliminary decree, whether the decree of the lower Court has been varied or affirmed. The reason is stated

> [See also [1921] A I R 1921 Cal 381 (382): 62 Ind Cas 418, Hemendra Mohan v. Dharanmath Chandra, (After preliminary decree in favour of a third mortgagee, a second mortgagee obtained a

> > ~ 'lsy loom

(1993) A I R 1928 All 22 (22): 69 Ind Cas 199, Ram Chandar v. Jai Mal.
 (1921) A I R 1922 Nag 217 (219): 18 Nag L R 58: 68 Ind Cas 919, Nanhelal v. Gulshan Rai.

Singh v. Kishen Jiwan Lal.

(1923) A I R 1923 Cal 899 (391): 75 Ind Cas 2, Uma Charan v. Nibaran

Chandra. (1921) A I R 1921 Mad 414 (415): 44 Mad 714; 64 Ind Cas 470, Venlayya

v. Sathiraju. (1933) A. I. R. 1933 Mad. 442 (446): 56 Mad. 520: 143 Ind. Cas. 412, Jujisti Mahapatrao v. Magata Patro. (Appeal formally brought before Court

withdrawn and dismissed.) (1930) A I R 1930 Mad 356 (300): 123 Ind Cas 199, Dakshinamooriki

Pathan v. Krishnasam: Radacaran.
(1930) AIR 1930 Mad 353 (354): 125 Ind Cas 95, Venhatarama Reddi v. question of law and second a decree on ments and time

269, Nammala Mahanlah v.

(1919) A I R 1919 Mad 938 (939): 48 Ind Can 185, Subbarayalu Nayudu v-Sundararaja Nayudu.

(1934) A I R 1934 Mad 65 (68): 147 Ind. Cas 1179. Ramasucani Iger v. Palakira Pathar. Where however pending appela a final decree is passed and the appeal is dismissed, the decree-holder has a right within B years of the appellate decree to have the final decree amended to as to bring it he conformity with the appellate decision.)

[1912] 16 Ind Cas 799 (600) (Mad), Thathara Nannabha Chetty v. Kurpal Krishnammal (Plaintiff is not however entitled to calculate time allowing for period of grace from date of appellate decree)

(1924) A I R 1924 Hom 99 (99) - 47 Rom 956 : 76 1nd C14 1023, Dattatraya Vithal v. Wasudee Agant.

(1924) ATR 1924 Lah 592 (583): 81 Ind Can 519: 5 Lah 257. Fitsholmes v. Bank of Upper India Ltd.

(1922) A I R 1922 Pat 205 (207) : 1 Pat 444 : 66 Ind Cas 790, Jawad Hussain v. Gendan Singh. by Mr. Justice Banerji in Gajadhar Singh v. Kishan Jiwan Lal, 15 as follows:

"It seems to me that this rule contemplates the passing of only one final decree in a suit for sale upon a mortgage. The essential condition to the making of a final decree is the existence of a preliminary decree which has become conclusive hetween the parties When an appeal has been preferred, it is the decree of the Appellate Court which is the final decree in the cause."

But where the appeal is dismissed under Order 41 Rule 11, Civil Procedure Code, *for for want of prosecution, *I' time would start from the date fixed in the decree of the lower Court. Where a decree in a suit for sale is against separate sets of defendants for different amounts and one set of defendants appeals against the decree so far as the decree against them is concerned, the starting point for an application for final decree as against the non-appealing defendants is the date of the original decree as not that of the spiellate decree. **If the original decree and not that of the spiellate decree. **If the original decree and not that of the spiellate decree. **If the original decree and not that of the spiellate decree. **If the original decree and not that of the spiellate decree. **If the original decree and not that of the spiellate decree. **If the original decree and not that of the spiellate decree. **If the original decree and not that of the spiellate decree. **If the original decree and not that of the spiellate decree. **If the original decree and not that of the spiellate decree. **If the original decree and not the original decree and not the original decree and not that of the spiellate decree. **If the original decree and not the original decree and not the original decree and not the spiellate decree. **If the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and not the original decree and

It has been already seen that an application for a final decree is an application in a suit and not one in execution. Therefore, where an application for final decree is properly disposed of or is dismissed for default or non-prosecution, a second application made out of time cannot be treated as a continuation of the former application and will be barred. ¹⁸ But, where the application is adjourned at the request of the defendant or is not judicially disposed of, a second application would be deemed to be an application asking the Court

- (1918) A I R 1918 Oudh 878 (378) 21 Oudh Cas 176 47 Ind Cas 206, Lalles Ram v Jot Singh
- (1920) A I R 1920 Nag 52 (53) 54 Ind Cas 323, Nilhanth v Madho Rao.
 (1918) A I R 1918 All 76 (77) 40 All 203. 48 Ind Cas 370, Nitamuddin Shah v Bohra Bhim Sen
 - (But see (1915) A I R 1915 AH 836 (837): 38 AH 21: 30 Ind Cas 494, Madho Ram v. Nahal Singh
 - (1917) A I R 1917 Oudh 91 (92): 20 Oudh Cas 205 * 41 Ind Cas 858, Jagdish Singh v. Ram Adhin Singh.]
- 15. (1917) A I B 1917 Alt 163 (163) 42 1nd Cas 93 : 39 Alt 641 (S B).
- 16 (1924) A 1 R 1924 Bom 98 (99) 96 Ind Cas 1923 47 Bom 956, Dattatraya Vithal v Wasideo Anant.
- (1933) A 1 R 1933 Mad 442 (446). 55 Mad 520: 143 Ind Cas 412, Jujisti Mahapatrao v. Magata Patro.
 - (1922) A 1 R 1922 Pat 201 (202) 66 Ind Cas 97 . 1 Pat 435, Chhotey Narain Singh v Kedar Nath Singh
- 18. (1921) A 1 R 1921 All 56 (58) 43 All 820 : 60 Ind Cas 817, Gayan Singh v. Ata Husain
- (1918) A 1 R 1918 All 285 (296) · 40 All 235 : 43 Ind Cas 518, Ahmad Khan v Gaura.
 - (1923) A 1 R 1923 Bem 420 (421): 78 Ind Cas 187, Harjiwan Deoraj v. Gajanan Kashinath
 - (1922) A I R 1922 Mad 65 (66) · 69 Ind Cas S66, Mummadi Venlatiah v. Venlata Subbiah
 - (1937) A 1 R 1937 Sind 273 (275, 278) 172 Ind Cas 520 31 Sind L R 180, Premonal Daomal v Khudabuz
 - (1924) A 1 R 1924 Mad 890 (891) 85 Ind Cas 808, Athamsa Rowther v. Ganesan.

Article 181 Note 4

Article 181 Notes 4-5

to continue the prior application.20

5. Application for final decree in redemption euits — Order 34 Rule 8, Civil Procedure Code. — An application by a mortgagee for a final decree under Order 34 Rule 8, Civil Procedure Code, in a sut for redemption is governed by this Article! Subrule 3 of Order 34 Rule 8, Civil Procedure Code, requires an application to be made by the mortgage.

Before the amendment of Order 34 Rule 8, Givil Procedure Code, by Act 21 of 1929, there was a difference of opinion as to whether an application by a mortgagor under that Rule was governed by any period of limitation. It was held in the undermentioned cases that as the Rule, as it then existed, did not require the mortgagor to make an application, it was the duty of the Court to pass a final decree when the amount due was paid into Court and that, therefore, this Article would not apply to euch an application. It was, however, held in other cases that an application made under that Rule should be regarded as an application for extension of time for payment and

[See hawever (1930) A I H 1936 Pat 98 (91); 150 Ind Cas 28: 15 Pat 51, Harlat Kamtiv, Jhari Singh. (First application dismissed for non-payment of batta—Dismissal not proper—Evea then if second application is out of time, Court has inherest power to restore original application.)]

20. (1933) A I R 1933 Cal 816 (817): 147 Ind Cas 206, Menaka Bala Dasi v. Hyralal Gobindalal.

(1925) A I R 1925 Nag 291 (292); 21 Nag L R 47; 88 Ind Cas 901, Chimnaji Raibhanji v. Sonaji.

(1928) A I R 1928 Mad 971 (972): 109 Ind Cas 875, Mallikaraja Pudu v.

(1922) A. I. R. 1922, A.H. 446 (447): CS Jud Cas 175, Kallu Mal v. Kashi Nath (Application for final decree returned for want of correct statement of amount due and description of property—No time fixed for amen's ment.—Re-presented after capting at three perast—Hald to be in time) (See also (1919) A. I. R. 1919 Cal. 1052 (1034), 45 Ind Cas C57, Makunda LA Kundu v. Prepa Nath Motra.]

Note 5

- (1925) A I R 1925 Oudh 255 (256): 29 Oudh Cas 46: 80 Ind Cas 706, Md Bagar Khan v. Jagat Naram Lat.
- (1927) A I R 1927 All 305 (305): 100 Ind Cas 324, Abdul Karım v. Durga Prosad.
- 2. (1914) A 1 R 1914 Mad 592 (393) : 23 Ind Cas 293, Doli Khodalo Pairo v. Lingarapi Vidya Bhushana.
 - Lingarapi Vedya Bhushana. (1925) A I R 1925 Oudh 649 (650): 29 Oudh Cas 261: 90 Ind Cas 418,
 - Bhawan Prasad v. Ram Rats Kunwar. (1925) A 1 R 1925 Oudh 255 (256) 29 Oudh Cas 46: 80 Ind Cas 706, Md.
 - Baqar Khan v Jajat Narain Lal. (1922) A 1 R 1922 Oudh 33 (31) 66 Ind Cas 944, Banks Behari Lat v.Ghani
 - Ahmad. (1923) A 1 R 1923 Oudh 156 (157): 74 Ind Cas 162, Ram Rup v. Ghani
 - Ahmad. (1927) A 1 R 1927 Bom 32 (34) : 50 Bom 730 : 99 Ind Cas 913, Moru Naru-
- shet v. Ganyabas.

 3. (1919) A 1 R 1919 Bom 53 (56) . 43 Bom 689 : 51 Ind Cas 924, Varudev Vishnu v Goyal Parashram.

would be governed by this Article. The amendment of Order 34 Rule S, Civil Procedure Code, in 1929 by inserting the words "on application made by the plaintiff" in sub-rule 1 makes it clear that an application by a mortgagor would also now be governed by this Article.

6. Application for personal decree-Order 34 Rule 6. Civil Procedure Code. - Before the enactment of the Code of Civil Procedure, 1903, there was a difference of opinion as regards the applicability of Article 178 (corresponding to this Article) to an application under Section 90 of the Transfer of Property Act. It was held in some cases that the application could not be considered to be one for the execution of a decree within the meaning of Article 179 (corresponding to the present Article 182) and that, therefore, Article 178 would apply. In some cases,2 on the other hand, it was held that as the application was not one under the Code of Civil Procedure, Article 178 did not apply. This conflict of opinion has been removed by the transfer of the provision relating to personal decrees, to Order 34 Rule 6 of the Code of Civil Procedure which requires the Court to pass a decree for the balance due on an application made by the plaintiff. Such an application is one made in a suit for a fresh decree and is clearly one under the Code of Civil Procedure within the meaning of this Article 5 Even where the mortgage decree is passed by a Chartered High Court on its Original Side, an application for a personal decree is governed by this Article

(1929) A I R 1929 Rang 804 (305) . 124 Ind Cas 200, Maung Saw v Ma

Note 6

- 1 (1899) 21 All 453 (454) 1899 All W N 166, Ram Sarup v Ghaurans. (1903) 6 Oudh Cas 114 (118), Ram Baghuber v Mt. Zahurun nasa.
- (1911) 10 Ind Cas 21 (22) (Oudb), Amer Chand v Narsingh Narain.
- (1907) 84 Cal 672 (675) 11 Cal W N 674 6 Cal L Jour 119, Sheik Rahama. Karim v Sheikh Abdul Kariin.
 - (1899) 11 C P L R 141 (143), Nathuram v. Raja Seth Goluldas,
- 3 (1925) A I R 1925 Cal 834 (836, 838, 842) 52 Cal 828 89 Ind Cas I (F B), Francis Higgins Pell v Minnie Gregory. (Overruling 42 Cal 294 A I R 1915 Cal 725.)
 - (1933) A I R 1933 Cai 251 (252) 60 Cal 19 143 Ind Cas 679, Pradyumna Kumar v Gopendra Mallick.
 - (1928) A I R 1928 Bom 323 (325) 113 Ind Cas 515, Hars Janardhan v.
 - Krishnaji Balkrishna. (1916) A I R 1916 Nag I (3) 13 Nag L R 76 . 39 Ind Cas 854, Chunni Lal v Trikamdas
 - (1920) A I R 1920 Upp Bur 21 (23) · 60 Ind Ca2 23 3 Upp Bur Rule 261, Yinke Supaya v. Maung Kin
 - [But see (1915) A I R 1915 Cal 725 (726) 42 Cal 294 S0 Ind Cas 719, Bishrambhas Sahav Rams Amadar Kadoria Das (Overruled in A I R 1925 Cal 834 without adverting to this argament The difficult bas lear emonded by the invertion of the words "on application by him" in O. 34 R 6 by Act 21 of 1929 il

Article 18: Notes 8-6 Artiole 181 Note 6 and not by Article 183, infra. The reason is that it is an application for a new decree in the anit and cannot be said to be one for enforcing a judgment or decree within the meaning of Article 183. This Article will also apply te an application under Order 34 Rule 8A, Civil Procedure Code, a provision newly introduced by Act 21 of 1929.

The starting point of time for an application for personal decree is the date of the confirmation of the sale held in execution of the mortgage decree.5 Where an appeal is preferred against an order confirming a sale after dismission an application to set aside the sale and such appeal also is dismissed, the period of three years under this Article begins to run from the date when the sale was confirmed by the Appellate Court and not from the date of confirmation of tho sale by the lower Conrt.6 As to when time starts where mortgaged property has been ordered by Court to he sold privately, see the undermentioned case. Where a decree by mistake included a nonhypothecated property and the decree-holder applied for sale of such property niter the sale of the properties covered by the mortgage and thoreupon the indement dehter applied for and succeeded in getting the decree amended, it was held that, for nn application for a personal decree, time must be deemed, under the circumstances of the case, to run from the date of such amondment.8

Where an execution sale of the mortgaged property is held and the decree is thereby fully discharged, but thereafter, in a separato suit, it is held that the mortgager had no title to the mortgaged property and, therefore, the sale is void and the mortgages applies for a personal decree, when does time height to run? The High Court of Madras has held that the right to a personal decree accurse on the date when the sale is declared to be void. But the High Court

^{4. (1935)} A I R 1935 Rang 187 (188) : 13 Rang 205 : 156 Ind Cas 701, Chokalingam Chettsar v. Maung Tun Yin.

 ⁽¹⁹³¹⁾ A I R 1931 Cal 166 (167): 58 Cal 741 · 130 Ind Cas 815, Krishna Bandhu Ghatak v. Panchlari Saha. (Time runs not from the date of color

⁽¹⁹³³⁾ A I R 1933 Cal 231 (252): 60 Cal 19: 143 Ind Cas 679, Fradynmnakumar v. Gopendra Mallick, (Fact of decree-holder's costs not having been taxed will not delay starting point)

^{(1913) 21} Ind Cas 530 (530) (Mad), Lama Venkata Subba Iyerv. Shanmulam Pillat.

^{(1906) 23} All 660 (664); 3 All L Jour 445, Gajadhar Lal v. Alliance Bank of Simila. [See also (1912) 14 Ind Cas 591 (592) (All) Behary Lal v. Basheshar

^{8. (1902) 1902} All W N 50 (51), Fasal Hussain Khan v. Shohrat Singh.
9. (1926) A I R 1926 Mad 911 (912): 97 Ind Cis 202, Sita Subramania Pillai
v. Fooralingan Pillai

of Allahabad has taken the view that time runs from the date when the purchase-money is refunded.¹⁰

An application for a personal decree which has been dismissed, cannot furnish a starting point for a fresh application, since the application is not one for execution of a decree.¹¹

7. Application for restitution—Section 444, Civil Procedure Code.—There is a great divergence of judicial opinion as to whether this Article or Article 182 applies to an application for restitution. Under Section 533 of the Code of Civil Procedure, 1832, an application for restitution was regarded as being in execution of the appellate decree and was held governed by Article 179 (now Article 182) of the Act of 1877. Applications for restitution, not falling within that Section, were not treated as execution applications but were held to be governed by Article 178.2

Under the Code of Civil Procedure of 1903, the High Courts of Madras, Bombay, Patna and Rangoon and the Chief Court of Oudh have held that an application for restitution is one in execution of a decree within the meaning of Article 182 infra. But the High

10. (1927) A I R 1927 All 395 (396) 49 All 506 . 100 Ind Cas 775, Badal Single v. Debt Saran.

 (1918) A I R 1918 All 105 (106) 40 All 551 : 47 Ind Cas 562, Mohammad Iltifat Hussan v. Allimunnissa.

Note 7

(1897) 20 Mad 443 (449): 8 Mad L Jour 79, Venkayya v Ragavacharlu.
 (1910) 7 Ind Cas 896 (889) (Cal), Analya Ratan v. Prea Nath Dutt.
 (1886) 8 Ml 645 (649): 1886 All W N 178, Nand Ram v. Sita Ram.

[But see (1887) 10 Mad 66 (67), Kurupam Zamindar v. Sadasita. (Dissented from in 20 Mad 448.)]

- (1912) 16 Ind Cas 238 (239) (Cal), Massirunmissa Khalun v. Joy Chand Lal. (1900) 28 Cal 118 (115), Harish Chondra Shaha v. Chandra Mohan Dass.
- (1900) 28 Cal 118 (115), Harish Chondra Shaha v. Chandra Mohan Dass. [See also (1908) 80 All 476 (479) · S All I. Jour 527 . 1909 All W N 206, Bithaldas v Jamna Prasad.] 3. (1937) A I R 1937 Mad 150 (150) : 107 Ind Css 258, Kandaswams Mudals v.
 - Annamala: Reddy.

 (1926) A I R 1926 Mad 813 (814) 95 Ind Cas 587, Panchapakesa Ayyar v.
 - Natesa Pattar. (1917) A I R 1917 Mad 194 (195) : 42 Ind Cas 530, Unnamala: Ammal v.
 - Mathan
 - (1931) 1931 Mad W N 1006 (1007); Muniah v. Gangamma.
 - (1921) A I R 1921 Bom 67 (67): 45 Bom 1137 . 62 Ind Cas 233, Hamidalli Kadamalli v. Ahmadalli Mhibuballi.
 - (1934) A I R 1934 Pat 246 (248, 251, 253) 13 Pat 411 · 143 Ind Cas 1180 (F B), Bhaunath Singh v. Kedar Nath Singh. (Overruling A I R 1925 Pat 1.)
 - (1931) A I R 1931 Pat 646 (647) . 152 Ind Cas 944, Lokenath Singh v. Mahabir Singh. (1923) A I R 1923 Pat 371 (374) - 72 Ind Cas 912: 2 Pat 277, Basania
 - (1923) A I R 1923 Pat 371 (374) 52 Ind Cas 912: 2 Pat 271, Basanta Kumar, Dass v. Balmalund Marwar,
 - (1933) A I R 1933 Rung 180 (183): 11 Rang 275. 149 Ind Cas 889, Muthul arappan Chettyar v. Annamala, Chettyar.

Article 181 Notes 6—7

Article 181 Note 7

Courts of Calentta, Allahabad and Lahore and the Judicial Commissioner's Court of Nagpur have held that such an application is not one in execution of a decree but is one governed by this Article.4 Even according to the latter view, however, where restitution is claimed on the reversal by the Privy Council, of a decree of a High Court, the application is one to enforce the decree of the Privy Council within the meaning of Article 183 infra, and is governed by that Article.5

(1931) A I R 1931 Oudh 51 (52): 130 Ind Cas 78: 6 Luck 448, Chandida Singh v. Bithal Das. [See also (1926) A I R 1926 Oudh 199 (199, 200) : 1 Luck 40 : 92 Ind

C1s 23, Sant Sahai v. Chhuta: Kurms. (Benefit of S. 6 given.) (1917) A I R 1917 Born 210 (211): 41 Born 625; 41 Ind Cas 238,

Kurgodi Gauda V. Ningan Gauda, (Do.) (1919) A I R 1919 Bom 175 (176): 43 Bom 235: 48 Ind Cas 180, Shivbar Babya Swami v. Yeshu Cheoo Nayakin.]

(But see (1925) A I R 1925 Pat 1 (8, 14) : 78 Ind Cas 200 : 3 Pat 371 (F B), Balmahunda Marwari v. Basania Kumari Dassi.

(1928) A I R 1928 Pat 598 (590): 114 Ind Cas 478: 7 Pat 794, Rambu Jhawan Thakur v. Bankey Thakur.

(1918) A I R 1918 Pat 52 (53): 89 Ind Cas 653: 2 Pat L Jour 206, Jagdip Narain Singh v. F, H. Holloway.

(1918) A I R 1918 Pat 396 (398) : 47 Ind Cas 47 : 3 Pat L Jour 867. Krupansındhu Roy v. Balbhadra Das

(1915) A I R 1915 Low Bur 141 (142): 8 Low Bur Rul 262: 80 Ind Cas 680, Asha Bibi v. Nuruddin.1

4. (1932) A I R 1932 Cal 808 (310) · 59 Cal 837 : 197 Ind Cas 802, Saraj Bhusan Ghosh v. Debendra Nath Ghosh.

(1926) A I R 1926 Cat 981 (982) : 92 Ind Cas 960, Fasalar Rahaman v. Abdul Samad. (1817) A I R 1917 Cal 168 (193) : 38 Ind Cas 17. Asutosh Goswamy v.

Upendra Prosad. (1938) A I R 1933 All 552 (554): 177 Ind Cas 695, Rama Kant v. Satya

Narain (1934) A I R 1934 All 626 (645) : 57 All 26 : 150 Ind Cas 1096 (F B), Parmeshar Singh V. Sitladin Dube.

(1923) A I R 1922 All 223 (225) : 44 All 407 : 66 Ind Cas 144, Jiwa Ram v. Nand Rom.

(1938) A I R 1938 Lah 456 (457): 177 Ind Cas 480, Telu v. Raja Ram. (1926) A I R 1926 Lah 685 (686) 96 Ind Cas 804, Gujar Mal v. Narain

Singh. (1924) A I R 1924 Lah 166 (166): 76 Ind Cas 501, Chanda Singh v. Bishen

Singh. (1918) A 1 R 1918 Lah 378 (379) . 1918 Pun Re No. 67 : 44 Ind Cas 301,

Ram Singh v. Sham Parshad. (1935) A I R 1935 Nag 76 (77), Babu Lal Brahmin v. Mt. Govendibas Misra. (1921) A I R 1921 Nag 112 (113): 54 Ind Cas 664: 17 Nag L R 62, Mt.

Radha v Mt. Sakhu [But see (1923) A I R 1923 Nag 101 (101) : 76 Ind Cas 255 : 18 Nag L R 200, Sonba v Parashram (Art 182 applies.)

(1923) A I R 1923 Nag 94 (94) : 71 Ind Cus 42, Laxman v. Bishram. (Governed by Art. 120).]

5. (1928) A I R 1928 AH 293 (294, 297): 50 AU 767: 112 Ind Cas 876, Sohan Bibs v. Barjnath Das

(1922) A I R 1922 AH 238 (239, 240) : 66 Ind Cas 545 : 44 All 555, Brig Lal v. Damodar Das (1923) 44 Mad L Jour 47 (48) (N I C) (Critical Note on 44 All 555 : A I R

1922 All 238, Brs; Lal v. Damodar Das).

(1921) 61 Ind Cas 806 (807) (All), Madhusudan Das v. Brij Lal.

Article 181 Note 7

According to the Courts taking the second of the two views mentioned above, the right in apply for restitution accrues on the date when for the first time a decision is given entitling the party to apply for restitution. Thus, where a decree reversing that of a trial Court is confirmed in second appeal, the period of limitation for an application for restitution begins to run from the date of the decree on second appeal confirming the reversing decree. Similarly, where an cx parte decree is set aside after a sale in execution thereof and the suit is subsequently dismissed after trial, time for an application for restitution runs from the date of the determination of the suit.

- (1933) A I R 1933 Cal 422 (423): 144 Ind Cas 150, Ashutosh Choudhury v, Sm. Kumed Kamini Dair.
 - (1917) A I R 1917 Ca) 159 (193): 38 Ind Cas 17, Ashulosh Goswamy v. Upendra Prosad.
- (1934) A I R 1934 All 626 (645) 57 All 26 150 Ind Cas 1096 (F B), Parmeshar Singh v. Sitla Din Dube
 - (1932) A I R 1932 All 609 (610) 141 Ind Cas 121 54 All 770, Mt. Dhapo v, Bakridi.
 - (1932) A I R 1932 Cal 309 (310) 50 Cal 337, 137 Ind Cas 302, Saraj Bhusan Ghosh v. Debendra Nath Ghosh.
 - (1928) A I R 1928 Cal 646 (651) . 56 Cal 61 : 117 Ind Cas 548 (S B), Hars Mohan Dalal v. Parameshwar Sahu.
 - (1933) A I R 1933 Col 422 (424): 144 Ind Coa 150, Ashufosh Choudhry v. Sm Eumed Karnin Dassi, Elecution cale—Deter-bolder withdraw amount due to him—Lateron, sale set asake and decree holder refunded the mosey and evelton-purchaser withdrew it—Deter-holder refunded end sale confirmed in appeal—A defendant preferred a second appeal code? In which was dismissed—Time runs from date of this appealing other.
 - (1924) A I R 1924 Lab 166 (167) 76 Ind Cos 501, Chanda Singh v. Bishen Singh
 - (But see (1926) A I R 1926 Cal 981 (982) . 92 Ind Cas 960, Factor Rahman v. Abdul Samad.
 - (1918) A I R 1918 Cal 457 (458) 43 Ind Cas 775, Atul Chandra Singh v. Kunja Behari Singha
 - (1935) A I R 1935 Cal 225 (221): 62 Cal 299: 155 Ind Cas 991, Krishna Chandra v Pabna Dhanabhandar Co, Ltd.
 - (1933) A I R 1933 Rang 180 (182): 11 Rang 275: 149 Ind Cas 859, Muthabarappan Chettyar v. Annamala: Chettyar. (Assuming Art 181 applies time starts from date of decree in second appeal)
- (1928) A I R 1928 Pat 598 (599): 7 Pat 794 * 114 Ind Cas 476, Rambujawan Thakur v. Bankey Thakur (Do.)] 8. (1931) A I R 1931 Lab 504 (504): 134 Ind Cas 206, Gujar Mal v. Narain
- Singh (No fresh account of right after dismissal of sout.)

 [1900] 28 Cal 113 [115], Harish Chandra Shaha v Chandra Mohan Dass.
- (1900) 25 Cai Ito (115), Hartin Chandra Shaka V Chandra Mohan Dats.
 (1934) A I R 1934 All 626 (615) . 57 All 26 . 150 Ind Car 1096 (F B), Parmeshar Singh v. Silladin Dube.

....

(But see (1935) A I R 1935 Nag 76 (77), Eabulal v. Mt. Gorindi Bat.] Article 181 Notes 7-11 that where the application for restitution is for mesne profits, time does not begin to run until possession of the property has been restored to the successful applicant.

In cases of applications for restitution governed by this Article, a second application made after the prescribed period canoot be treated as a continuation of, or kept alive by, the earlier application. Where a restitution application is stayed and consigned to the record room without final orders being passed on it, the application must be deemed to remain pending and after the order of stay is discharged, no question of any limitation under the Article can arise. It

- 8. Application for execution.—See Notes to Article 182, infra.
- 9. Application to set aeide sale. See Notes 1, 2, 8 and 10 to Article 166, ante.
- 10. Applications under Section 47, Civil Procedure Code.— Where a decree-holder recovers in exception, monoy in excess of what is due to him or to his share or in excess of the decree as amended later on, an application by the judgment-debtor under Section 47, Civil Procedure Code, for the refund of such excess amount is governed by this Article.¹

As to the applicability of this Article to applications under Order 21 Rule 100, Civil Procedure Code, by judgment-debtors, eea Note 3 to Article 165. ante.

11. Application for refund of purchase money — Order 21 Rule 93, Givil Procedure Code. — An application by an auction-purchaser in an execution cale for the refund of purchase money under Order 21 Rule 93, Civil Procedure Code, is governed by this

 (1926) A I R 1926 Lah 685 (686): 96 Ind Cas 804, Gujar Mal v. Naram Sungh.

(1938) A I R 1938 Lah 456 (457): 177 Ind Cas 490, Telu v. Raja Ram. 11, (1938) A I R 1938 AR 552 (554): 177 Ind Cas 695, Rama Kant v. Satya

Note 10

 (1885) 7 All 371 (372): 1885 All W N 61, Mula Raj v. Debi Dihal. (Right to apply accrues when the account was taken and stated on the application of the undement-debtor)

(1908) 80 All 476 (479): 1908 All W N 206: 5 All L Jour 527, Bithal Das v. Jamna Prasad. (Ex parts decree set aside and a fresh decree for a

smaller sum passed after trial)

Narain.

(1905) 27 All 485 (487): 2 All L Jour 169: 1905 All W N 63, Harnam Chandar v. Muhammad Yar Khan. (Decree awarding large sum than was due under judgment - Amount recovered - Subsequent amendment of decree and application for relund of excess—Time starts from date of amendment.)

[See also (1920) A I R 1920 Bom 208 (209): 44 Bom 97: 55 Ind Cas 967. Ganzatrao Sullangao y. Anandrao Jagdeerao.] Article, and time runs from the date of the order setting aside the sale.

Article 181 Notes 11-13

12. Application by auction-purchaser for possession — Order 21 Rule 95, Civil Procedure Code.—See Notes to Article 180, ante.

13. Application to bring on record legal representatives.— Applications to bring on record the legal representatives of a deceased party are operated by Articles 176 and 177, ant. But this Article will govern an application to bring on record the legal representatives of a deceased person who was not a defendant or respondent on the date of bis death.¹

A decree of the Privy Council has full force and effect notwithstanding the death, before the date of judgment or hearing, of a respondent in the appeal before it and against whom a decree is passed. An application to brung on record his legal representatives in such a case falls within this Article.

Where a plaintiff, who is suring so a representative capacity, dies, an application by a person who is one of those represented by the deceased is governed by this Article ³

See also the undermentioned cases.

As regards the applicability of this Article to applications to bring on record the legal representatives of a deceased person in

Note 11

- 1 (1918) A I R 1918 Mad 353 (355) 40 Mad 1009: 45 Ind Cas 109, Trumalaisamy Naidu v Subramaniam Chettiar
 - (1889) 11 All 372 (374) 1889 All V N 113, Giridhar, v Sital Prasad. (1923) A I B 1923 Cal 85 (88) 50 Cal 115 70 Ind Cas 606, Mahar dit v Sarfaddun,

[See also (1910) 6 Ind Cas 804 (806) (Cal), Gopal Saran Narain Singh v. Mahomed Sheikh Ashkam]

(1889) 11 All 372 (374) * ISS9 All W N 113, Giridhars v Sital Praiad.
 (1918) A I R 1918 Mad 353 (355): 40 Mad 1009 45 Ind Cas 109, Tiru-malausam Nacius v, Subramanium Chettiar.

Note 13

- (1924) A I R 1924 Lah 316 (318)
 73 Ind Cas 397, Wahrd Bakhsh v. Lalta Pershad
- (1924) A I R 1924 Mad 695 (695): 47 Mad 618 80 Ind Cas 65. Kalyans Pillas v. Thiru Venkataswams Iyengar.
- 3. (1931) A I R 1931 Mad 590 (591) 54 Mad 770 132 Ind Cas 299, Mahomed Kanni Rowther v. Nama Mahomed Rowther
 - (1919) AIR 1919 Mad 479 (480) · 49 Ind Cas 263, Krishnaswami Iyer v. Seethalakshmi Ammal. (Reversioner)
 - (1921) A I R 1921 Mad 124 (124) 62 Ind Cas 360, Sammatha Pillas v. Rajagogala Mudaliar. (Application by co-trustee after death of trustee)
- 4. (1882) 8 Cal 837 (847) . 10 Cal L R 449 7 Ind Jur 25, Benode Mohine Chowdhrain v Sharat Chunder Dey Chowdhury
 - (1903) 30 Cal 609 (612) : 7 Cal W N 517 (F B), Surendra Keshub Roy v. Khetter Krishto Mitter.

Article 181 Notes 13—16

appeals from orders in execution proceedings, see Notes to Article 177, ante, and Notes to Order 22 Rule 12 in the Authors' Code of Civil Procedure.

- 14. Application to rescind leave to sue. The period of limitation for an application to rescind leave to sue granted under clause 12 of the Letters Patent is three years under this Article and time runs from the date when such leave is granted.
- 15. Miscellaneous applications under the Civil Procedure Code. — The following applications have also been held to fall under this Article: —

1, to restore an application to set aside an ex parte decree which has been dismissed for default, 1

 to restore a suit dismissed for default not falling under Order 9 Rule 8, Civil Procedure Code;³

 to revive under certain circumstances a cuit which has been already dismissed.

See also the undermentioned cases.4

- 16. Application for final decree in partition and partnership suits. — It follows from the discussion in Note 2, anke, that an application in a pending suit asking the Court to proceed to judgment is not governed by this Article or by any other rule of limitation.
 - (1906) 4 Cal L Jour 568 (571): 11 Cal W N 186, Shamanand Das v. Raj Naram Das.

Note 14

- 1. (1889) 13 Born 404 (411), Kessowji Damodar Janam v. Luckmidas Ladha. Note 15
- 1. (1920) A I R 1920 Lah 199 (200) : 56 Ind Cas 25, Maula Bakhsh v. Ram Das.
- (1935) A I R 1935 Pesh 186 (188): 160 Ind Cas 457, Mt. Zainab Bibi v. Bihars Lal.
- (1918) A I R 1918 Outh 311 (313): 47 I. C. 197, Rameshuer Dayal's Ger Saha: (Suit for pre-emption pending — Title qualifying plaintiff for pre-emption lost by vittion of decree in another suit—Suit dismissed as not maintainable on condition of revival on decree being set saide in

(1934) this Article.)
Nag L R 53.
- nossession and

twented as

 (1882) 4 Mad 155 (157), Appaya v. Collector of Vizagapatam. (Application by Government under S 411, Civil Pro. Code, 1832, to recover contfees ordered to be paid by a party.)

[1908] 1908 Upp Bur Rall 1st Quarter, Limitation p. 5 (5), Nga Lu Dok v. Mi San Baing. (To restore au appeal dismissed under S. 549, Civil Pro. Code, 1832.)

Note 16
1. (1930) A I R 1930 Mad 528 (538): 53 Mad 378: 131 Ind Cas 160, Ramanathan Chelly v. Alagappa Chelly.

Therefore, an application for a final decree in a suit for partition, or in a suit for dissolution of partnership and accounts, is not governed by this Article.

17. Application for ascertainment of mesne profits.—Under Section 244 of the Code of Gird Procedure, 1882, mesne profits were to be ascertained in execution Nevertheless, the general trend of opinion was that proceedings for the ascertainment of mesne profits under Sections 211 and 212 of that Code were not proceedings in execution of a suit, and that, therefore, neither Article 178 nor Article 179 was applicable to such proceedings. Order 20 Rule 12 of the Code of Civil Procedure, 1908, clearly provides that such proceedings are to be regarded as made in the suit itself and easts a duty upon the Court to pass a final decree after ascertaining the mesne profits is not governed by

(1692) 19 Cal 132 (188) (F B), Puran Chand v. Roy Badha Kishen. (A case of mesne profits)

 (1895) 22 Cal 425 (434), Duarka Nath Misser v Barinda Nath Misser, (1905) 28 Mad 127 (129) 14 Mad L Jour 436, Latchmang Chetty v. Rama-

nathan Chetty.
(1916) A I R 1916 Mad 809 (810) 30 Ind Cas 380, Srumasa Mudali v.

Pamasuamy Mudals.
(1918) A I R 1918 Mad 751 (755) · 40 Ind Cas 320, Sethurama Sahib v.

Chotta Raja Sahib.
(1938) A I R 1938 Oudh 229 (230) - 177 Ind Cas 556. Chintaman Tewari v.

(1938) A I R 1938 Oudh 229 (230) · 177 Ind Cas 556, Chintaman Tewars v.

Bhagirathi Tewari.

(1929) A I R 1929 Oudh 456 (457) 121 Ind Cas 287.5 Luck 280, Lalta Prasad v. Brahma Din (1920) A I R 1920 Oudh 231 (232) 60 Ind Cas 433 23 Oudh Cas 281, Tapa-

mmul Husain v Bande Rara (1939) A I R 1939 Pesh 101 (103) 146 Ind Cas 201, Fagur Chand v Maho-

med Akbar Khan. (1930) A I R 1930 Nag 206 (207): 122 Ind Cas 411 26 Nag L R 166, Mt.

Lazmibas v. Tukaram. (1906) 1906 Pun Re No 47 1907 Pun L R No. 86 1906 Pun W R No. 94.

Durga Das v. Fagir Chand.

[But see (1929) A I R 1929 Oudh 117 (120) 112 Ind Cas 205, Bishe-

shuar Gir v. Satish Chandra]
3. (1930) A I R 1930 Mad 528 (533) 53 Mad 378 131 Ind Cas 160. Rama-

Note 17

 (1892) 19 Cal 192 (139) (F B), Puran Chand v Roy Radha Eishen, (1897) 25 Cal 203 (206), Pryag Singh v Rayu Singh.

nathan Chetty v. Alagappa Chetty.

(1904) 26 All 623 (625) * 1904 All W N 146 1 All L Jour 344, Walsa Bib; v. Nazar Hasan

[See also (1879) 4 Cal 629 (633), Dildar Hossein v Mujecdunnissa. (1874) 22 Suth W R 328 (329), Bunsee Singh v, Mirza Nuzuf Ali Bea]

(See however (1881) 8 Cal 89 (91) 1B Cal L R 272, Hem Chunder Choudhry v. Brojo Soondury Debee (Art 162 applies)

(1887) 14 Cal 50 (54) 11 Ind Jur 143, Anando Kishore Dass Bulshi v. Anando Kishore Bose. (Art. 178 applies.)

(1900) 24 Bom 149 (155) 1 Bom L R 638. Ettama Ram v. Kishordae 1

Article 181 Notes 16-17 Artiole 181 Notes 17—18 this Article.² But the High Court of Madras has added a sub-rule to Order 20 Rulo 12, Givil Procedure Code, providing for an application heing made by the decree-holder for a final decree. Therefore, such an application in Madras would be governed by this Article.³

18. Certification of payment by decree-holder under Order 21 Rule 2, Givil Procedure Code. — It has been already seen in Note 2 ante that, in order that this Article may apply, there must be an application to the Court to exercise its judicial powers. The certification by a decree-holder under Order 21 Rule 2, Givil Procedure Code, of a payment made out of Court towards the decree by the judgment-debtor is not an "application" within the meaning of this Article and is not therefore governed by the period prescribed in this Article. Even where the decree-holder makes an application for such a purpose, the mere fact that the decement is called an application and is in the form of a petition cannot alter the real nature of the procedure and convert what was really no more than

 (1928) A I R 1928 Bom 236 (239): 109 Ind Cas 734: 52 Bom 860, Shanker Appaji v. Gangaram Bapuji.
 (1931) A I R 1931 AH 465 (469): 151 Ind Cas 755, Narain Das v. Bhagwais

Pressed.

(1923) A I R 1923 Bom 263 (270): 77 Ind Cas 497, Thana Zalalji v. Dhana Jawhrji.

(1929) A I R 1929 Pat 368 (368); 8 Pat 482; 117 Ind Cas 647, Kammakhya Narain Singh v. Alloo Singh.

(1926) A I R 1926 Pat 141 (143) · 92 Ind Cas 629 : 5 Pat 223, Bhatu Ram Mod. v. Fogal Ram.

(1918) 20 Ind Cas 685 (687) (Cal), Prasanna Kumar v. Asulosh Roy.

[See [1922] A I R 1922 Ondh 197 (198): 25 Ondh Cas 122: 68 Ind Cas 896, Kuber Singh v. Mt. Raf Zumar. (Decre directing ascertainment of mesne profits in execution — Assuming any limitation is applicable, application must be made within three years of date of appellate decree.)]

[But see (1921) A I R 1921 Bom 404 (406): 61 Ind Cas 449: 45 Bom 819, Gangadhar Mansla v. Balalrishna Soiroba.

(1923) A I R 1923 Bom 366 (367), 47 Bom 778: 73 Ind Cas 233, Usuf Alli v. Sayad Amin]

 (1936) A I R 1936 Mad 80I (804): 154 Ind Cas 670, Rama Rao v. Sree Ramamoorthy.

(1929) A I R 1928 Mad 522 (522) . 109 Ind Cas 523, Temmaraju v. Narammha Raju.

Note 18

1051, Jalim

Chand v. Yusufali Choudhurs.

591 · 3 Luck

(1934) A 1 R 1934 Pat 380 (381): 153 Ind Cas 1018, Madan Singh v. Kamakhya Narain Singh.

(1927) A I R 1927 Oudh 7 (11): 29 Oudh Cas 358: 1 Luck 428: 98 Ind Cas 358, Prakash Singh v. Allahabad Bank, Lld.
(1936) A I R 1936 Nag 281

Baijna'h v. Kanhany (1935) A I R 1935 Mad 922

1.

935) A I R 1935 Mad 922 Rao. a certificate of certain pryment into an application within the meaning of this Article.2

Article 181 Notes 18—20

- 49. Application to amend decree. An application to amend a decree so as to bring it in conformity with the judgment, or account of arithmetical or clerical errors, is not governed by this Article or by any other Article. The reason is that this Act relates to the action of partnes, but not to the action of the Court. And it is the duty of the Court to amend the decree whenever it hecomes aware of its variance with the judgment or of the clerical or arithmetical errors in it. When the parties move the Court for such a purpose, they are only bringing the variance or error to the notice of the Court, so that there is no application properly so called?
- 20. Application to add parties.—Rules of limitation do not preclude a Court from acting under Order 1 Rule 10, or Order 41 Rule 20³ of the Code of Civil Procedure in adding a person as a necessary party to a suit or to an appeal. It is a power which may be exercised by the Court is seised of

(1921) A I R 1921 Bom 411 (412): 45 Bom 91 59 Ind Cas 399, Pandurang Balkrishna v. Jagya Bhau

(1929) A I R 1929 Cal 687 (689). 57 Cal 789 127 Ind Cas 258, Hridoymohan Sanyal v. Khagendra Nath.

[But see (1925] A I R 1925 Rang 26 (27) . 84 Ind Cas 369 . 2 Rang 393, Maung Law San v. Maung Po Thein.

(1922) A I R 1922 Cal 30 (31): 68 Ind Cas 780, Bals Mahammad Sahs v. Ajanmas)
2 (1929) A I R 1999 P C 19 (23) 114 Ind Cas 581 56 Ind App 30 8 Luck

(1935) A I R 1935 Mad 972 (923) 159 Ind Cas 38, Gangayya Seshagiri Rao

Note 19

(1884) 7 All 276 (280)
 1885 All W N 13, Raghunath Das v Raj Kumar.
 (1886) 8 All 519 (584)
 1886 All W N 182, Dhan Sungh v Basant Singh.
 (1887) 11 Bom 284 (285), Shitapa v. Siepanch Lingapa.

(1887) 9 All 364 (365) 1897 All W N 79, Darbo v Kesho Ras.

(1888) 11 All 207 (291) 1889 All W N 55 13 Ind Jur 427 (F B), Muham-

erial function)

(1897) 1897 Pun Re No 12, Dett Das v Ourdatta.

(1911) 12 Ind Cas 151 (154) (Cal), Langat Singh v. Janks Koer

(1913) 21 Ind Cus 540 (541) 7 Sind L R 53. Bilhomal Lalchard v Rajalmal Manomal.

[But see (1882) 4 All 23 (24) 1881 All W N 114, Gaya Prasad v. Shikhar Prasad.

(1886) S All 492 (495) 1886 All W N 156, Tarsi Liam v Van Singh] 2 (1886) 11 Bom 284 (285), Shu appa v Shii panch Lingapa

Note 20

 (1892) 14 All 524 (528) . 1891 All W N 104, Imamuddin v Liladhar (1886) 12 Cal 642 (652), The Oriental Bank Corporation v J. A. Charriol

^{2 (1889) 13} AH 78 (85) 1891 AH W N 1, Sohna v Khalal Singh

Article 181 Notes 20 —22 the case and is empowered by that Code to so act. Therefore, even if an application is made for such a purpose by a party, it is not governed by this Article. But it does not mean that a suit cannot be dismissed under Section 22 ante, as against that party on the ground of limitation. The power of a Court to add a party and the duty of the Court to dismiss the suit as barred by limitation are two different questions.³

An application by a person to get himself added as a party to a suit under Order 22 Rule 10, Civil Procedure Code, is not also governed by this Article. The right of an assignce pendente lite to apply in a pending suit is a right which accrues from day to day.

- 21. Application for sale certificate. This Article does not apply to an application for grant of a certificate of sale under Order 21 Rule 94. Givil Procedure Code. The reason is that it is an application for the exercise of a function of a purely ministerial character.
- 22. Applications under other Acts.—As has been seen in Note 2 ante, this Article applies only to applications under the Code of Ovril Procedure. Thus, it does not apply to applications under the Provincial Insolvency Act (5 of 1920), for which no period of limitation is prescribed, or under the Indian Companies Act, or to

3, (1892) 14 All 524 (528): 1892 All W N 104, Imamuddin v. Lilladhar. 4, (1913) 20 Ind Cas 685 (687) (Caf), Prasanna Rumar v. Asutosh Roy.

al), Prasanna Kumar v. Asutosa z Nota 21

1. (1982) 4 Mad 172 (173), Kylasa Goundan v. Ramasami Ayyan.

(1882) 6 Bom 586 (587), Vithal Janardhan v. Vithojirav Putlajirav.

(1883) 1883 All W N 262 (262), Petition of Kishen Singh.

(1884) 8 Bom 377 (380), Devidas Jagjuan v. Pirjada Began. (1910) 5 Ind Cas 263 (264) (All), Salig Ram v. Narain Das.

[But see (1880) 5 Bom 206 (207), Tuharam v. Saivaji Khanduji. (1880) 5 Bom 202 (206), In re Khaja Patihanji.]

Note 22

 (1924) A I R 1924 Mad 163 (167): 47 Mad 120: 75 Ind Cas 572, Suasubramania Pillas v. Theethiappa Pillas. (Application to prove debt in insolvency.)

(1920) A I R 1920 Mad 974 (974): 60 Ind Cas 123, Duraya Solagan v. Venkalarama Naucker. (Application to avoid a transfer made by insolvent before insolvency.)

(1924) A I R 1924 Lah 553 (554) . 75 Ind Cas 995, Darya: Singh v. Kunj Lal. (Do.)

(1925) A I R 1925 Mad 172 (173): 79 Ind Cas 413, Ramaswamiah v. Subramania Ayyar. (Do.)

(1920) A I R 1920 Lah 470 (470): 52 Ind Cas 188: 1919 Pun Re No. 151, Nikka Mal v. Marwar Bank Ltd. (Do.)

(1924) A I R 1924 Lah 331 (333) . 69 Ind Cas 403, Pirthi Nath v. Basheshar Nath. (Do.)

 (1933) A I R 1933 All 789 (791): 55 All 912: 145 Ind Cas 893 (F B), Shiam Lat v. Official Liquidators, U. P. Oil Mills Co., Ltd. (Application by a liquidator under S. 235, Companies Act.) applications for the giant or resocation of probate or letters of administration.⁷⁸ But where an application, though made under an Act other than the Code of Civil Procedure, is made to the Court asking it to exercise its jurisdiction by putting in motion the machinery of the Code of Civil Procedure, it will be an application falling within the scope of this Article.³

Article 181 Notes 22—23

See also the undermentioned cases where this Article has been applied without adverting to the fact that the application is not one under the Code of Civil Procedure.

 Applications under the Code of Criminal Procedure. — Applications under the Code of Criminal Procedure (5 of 1898).

- (1933) A I R 1933 P C 63 (64, 65): 142 Ind Cas 7: 54 All 1067 · 60 Ind App 13 (P C), Hausraj Gupla v. Dehra Dun Mussoorie Electric Tramway Go., Ltd.
 - [But see (1928) A I R 1928 Nag 194 (196) . 109 Ind Cas 550 : 24 Nag
 I. R 100, Sheikh Kandu v. Berar Grining Co., Ltd. (Application for winding up of a company is governed by this Article.)]
- 23 (1883) 7 Bom 213 (214), Bai Manehbai v. Manekji Kaiasji.
- (1882) 6 Cal 707 (708) 8 Cal L R 52 5 Ind Jur 474, In re Ishan Chander Roy.
 - (1892) 19 Cal 48 (50), Kashi Chundra Deb v. Gopikrishna Deb.
 - (1931) AIR 1931 Cal 717 (718) . 135 Ind Cas 286, Aswins Eumar v. Sukhaharan.
 - (1931) A I R 1931 Csl 713 (714) : 135 Ind Cas 282, Haumabais Muira v. Kunja Mohan. (For revocation of probate.)
 - (1918) A I R 1916 Cal 938 (942) 83 Ind Cas 273, Shyam Lat Ghose v. Rameswars Basu. (Do.)
 - (1894) 17 Mad 379 (381), Gnana muthu Upaden v Vana Koil Pillai Nadan. (1895) 8 Mad 207 (203), Janah v Kesaralu. (For succession certificate)
 - (1835) 8 Mad 201 (203), Sandar v Arsaram. (For succession certificate) (1911) 10 Ind Cas 120 (181) 1912 Pun Re No 20, Inder Naram v Onlar Lal.
 - (1868) 9 Suth W R 342 (343), Puroma Soonduree Dossee v Tara Soonduree Dossee (Letters of administration.)
 - (1901) 4 Oudh Cas 224 (226), Bichana v. Hira Lal (Do)

(Sale by the Insolveney Court)

- [See (1916) A I R 1916 Low Bur 10 (11) 35 Ind Cas 950 . 6 Low Bur Rul 422, Mooila Casum v Mooila Addul Rahum (Application under S 98 of Probate and Admunistration Act of 1881 for inventor v)
- 3 (1908) 81 Mad 24 (28) 8 Mad L Tim 19 · 17 Mad L Jour 441, Sambania Mudaliar v. Panchanodo Pillai. (Application to Court for delivery of possession under S. 40 of the Madras Revenue Recovery Act)
 - (1937) A I R 1937 Mad 31 (32) 167 Ind Cas 223 I L R (1937) Mad 495, Co-operative Credit Scarety, Arungunam v. Chunnascam Udayan, (Application to enforce award of Registrar under the Co-operative Societies Act.)
- (1935) A I R 1935 Lah 983 (983) 17 Lah 891 160 Ind Cas 636, Hussain Bahlah v Secretary of State. (Proceedings under the Indian Telegraph Act for the determination of compensation)
 - (1934) A Î R 1934 Cal 895 (897) 149 Ind Cas 1134, Saktısaran Sınha v. Radha Raman Mandai (Application under S 6-3, Pen Ten Act.) (1914) A I R 1914 Lab 209 (209) 23 Ind Cas 397, Afaal Al v. Aman Ali.

Article 181 Notes 23-24

such as under Section 195¹ or Section 517² or application for revision to the High Court against the order of an inferior Crimmal Court,³ are not governed by this Article, not being applications under the Code of Civil Procedure. Moreover, rules of limitation are foreign to the administration of criminal instice and it is only by specific legislation that periods of limitation can be rendered applicable to criminal proceedings.⁴

24. Enlargement of time. — In respect of an application falling within the scope of this Article, the period of limitation prescribed by this Article may be enlarged or-a fresh period computed by the application of Sections 14, 18, 19 or 20, ante.\(^1\) Where a minor's next friend obtains a preliminary mortgage decree and the minor, on attaining majority, applies for a final decree of ther the period prescribed by this Article has expired, the application will be harred by time.\(^1\) The reason is that Section 6 ante applies only to suits and to applications for execution.

As regards the application of Section 15 ante to an application falling under the scope of this Article, see Note 5 to Section 15 ante and the undermentioned case.³

Note 23

- 1. (1888) 10 All 350 (353) : 1888 All W N 92 (93) : 18 Ind Jur 86, Queen-Empress v. Ajudha Singh.
- (1916) A I R 1916 Mad 1110 (1113); 89 Mad 750; 14 Ind Cas 305; 18 On L Jour 209 (F B), Bapu v. Bapu.
- 2. (1924) A I R 1924 Lah 75 (75): 4 Lah 49: 78 Ind Cas 987: 24 Cr. L Jour 713, Kansha Ram v. Emperor.
- 3. (1930) A I R 1930 Oudh 401 (401): 126 Ind Cas 395 : 1930 Ori Cas 941: 31 Cn L Jour 1012, Naum Ata v. Emperor.
- 4. (1888) 10 All 350 (352) : 1888 All W N 92 : 13 Ind Jur SC, Queen-Empress v. Ajudhja Singh.

Note 24

- (1920) A I R 1920 Bom 208 (209): 44 Bom 97: 55 Ind Cas 967, Gangatrae Sulfanrae v. Anandrae Jagderae (Benefit et B. 14 given)
 (1992) A I R 1932 Cal 381 (382): 187 Ind Cas 378, Surja Kanta Dai v.
- Jogendra Nath Dutt. (Sec. 18 applied to an application to set aside a sale not falling within the scope of Art. 106.)
 - (1924) A I R 1924 Mad 859 (659) : 84 Ind Cas 970, Kallepalls Pallayya v. Bhimaraju. (Do.)
 - (1919) A I R 1919 Mad 709 (710) 42 Mad 52: 48 Ind Cas 298, Subba-
- lakshms Ammal v. Hamalinga Chetty. (Do.)
 (1911) 10 Ind Cas 21 (22, 23) (Outh), Amir Chand v. Narsingh Naram. (Case did not satisfy conditions of Section 14 and therefore time not enlarged.)
- 2 (1933) A I R 1933 Cal 508 (509) : 144 Ind Cas 768, Pulin Chandra Sen v.
- (1927) A I R 1927 Pat 105 (107): 99 Ind Cas 959, Mahabir Prasad Narayan Deo v. Chhota Nagpur Banking Association, Ltd.

the execution years; or, of a decree or where a 2. (where there has been an order of any certified Civil Court copy of not provided the defor hy article cree or 183 or by sec- order has Code of Civil gistered,

182.* For Threell. The date of the decree or order, or

appeal) the date of the final decree or order of the Appellate Court, or the withdrawal of the appeal, or

tion 48 of the heen re-3. (where there has heen a review of judgment) the date Procedure, six years. of the decision passed on the review. or

Aet of 1877, Article 179.

179. - For the exe. Three years, 1. The date of the decree or order, or cution of a decree or, where a or order of any Civil Court not of the decree or order has provided for by No 180 or by the Code been regisof Cavil Procedure, Section 230 Tears.

1908.

- certified copy 2. (where there has been an appeal)1 the date of the final decree or order of the Appellata Court, or
- tared, six 3. (where there has been a review of judgment) the date of the decision passed on tha review, or
 - (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step-in-aid of execution, of the da-
 - 5. (where the notice next hereinafter mantioned has been issued) the date of assuing a notice under the Code of Civil Procedure, Section 248, or
 - 6 (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date
 - Explanation I .- Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 4 of this number shall take effect in favour only of such of the said persons or their representatives as it may be made by But when the decree or order has been passed jointly in favour of more persons than one, such application, if made by any one or more of them, or by his or their represen-tatives, shall take effect in favour of them all

Where the decree or order has been passed severally against more persons than one. distinguishing portions of the subjectArticle 182

4. (where the decree has been amended) the date of amendment, or

So, (where the application next hereinafter mentioned has been made) the date of the final order passed on an application made in accordance with law to the proper Court for execution, or to take some step in aid of execution of the decree or order, or

matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But where the decree or order has been

their representatives, shall take elections of them off

against them all.

Explanation II.— "Proper Court" means
the Court whose duty it is (whether
under Sections 226 or 227 of the Code of
Civil Procedure or otherwise) to execute
the decree or order.

Act of 1871, Articles 167 and 168.

267. — For the erecution of a decree or order of any Civil Court not provided for by No. 169.

Three years

Six years

The date of the decree or order, or (where there has been an appeal) the date of the final decree or order of the Appellate Court

or (where there has been a review of judgment) the date of the decision passed on the review.

or (where the application next hereinsiter mentioned has been made) the date of applying to the Court to enforce, or keep in force, the decree or order.

or (where the notice next hereinafter made has been issued) the date of issuing a notice under the Code of Civil Procedure, section two hundred and sixteen,

or (where the application is to enforce payment of an instalment which the decree directs to be paid at a specified date) the date so specified.

The date of the decree or order, or (where there has been an appeal) the date of the final decree or order of the Appellate Court.

or (where there has been a review of judgment) the date of the decision passed on the review.

168. — For the execution of any such decree or order of which a certified copy has been registered under the Indian Registration Act,

(in respect of any amount, recovered hy execution of the decree or order, which the decree-holder has been directed to refund hy a decree passed in a suit for such refund) the date of such lastmentioned decree or, in the case of an appeal therefrom, the date of the final decree of the Appellate Court or of the withdrawal of the appeal, or "

7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.

Act of 1859 - Sections 20, 22 and 23.

20. No process of execution shall issue from any Court not established by Royal Charter to enforce any judgment, Time for enforcdecree or order of such Court, unless some proceeding shall ing execution of judgment, dc., of a Curl Court not have been taken to enforce such judgment, decree or order, or to keep the same in force, within three years established by Royal next preceding the application for such execution Charter.

Time for execu-tion of a summary award of Civil Court or Resenue Authority

22. No process of execution shall issue to enforce any summary decision or award of any of the Civil Courts not . r

of this Act.

23. Nothing in the preceding Sections shall apply to any Preceding Section summary decision or award in force at the time of the not to apply to sum- passing of this Act, but process of execution may be issued mary awards in either within the time now limited by law for issuing force at the passing process of execution thereon or within two years next after the passing of this Act, whichever shall first expire

* Before the amendment of the Act by Act 9 of 1927, Clauses 5 and 6 of the third column were as follows

- Clause 5. (where the application next hereinafter mentioned has been made) the date of applying in accordance with law to the proper Court for execution, or to take some step-in-aid of execution of the decree or
 - 6 (where the notice next hereinsfier mentioned has been is ned) the date of issue of notice to the person against whom execution is applied for to show cause why the decree should not be executed against him, when the some of such a notice is required by the Code of Civil Procedure, 1908, or

Explanation I. — Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this article shall take effect in fayour only of such of the said persons or their representatives as it may he made by. But where the decree or order has been passed, jointly in favour of more persons than one, such application, if made hy any one or more of them, or hy his or their representatives, shall take effect in favour of them all.

Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be But where made against. the decree or order has been passed jointly against more porsons than one, the application, if made against any one or more of them, or against his or their representatives, shall take effect against them all.

Explanation II. — "Proper Court" means the Court whose duty it is to execute the decree or order.

Synopsis

Artiole 182

- Legislative changes.
- 2. Scope of the Article.
- 3. Applications by Government.
- 4. Extension of time under the Sections of the Act.
- 5. Exclusion of time by reason of adjudication in insolvency.
- Exclusion of time under Para. 11 of Schedule III of the Code of Civil Procedure.
- Exclosion of time under Section 3 of the Chota Nagpur Encumbered Estates Act (6 of 1876).
- 8. Application to execute decrees of Native States.
- 9. Transfer of decree from one Court to another-Limitation for execution of.
- 10. "Application for the execution of any decree or order."
 - 11. Decree must be capable of execution.
 - Application for final decree in snita for sale or foreclosure.
 - 13. Application for final decree in redemption suits.
 - 14. Application for ascertalnment of mesne profits.
 - Application for personal decree against mortgagor nnder Order 34 Rule 6 of the Civil Procedure Code.
 - 18. Application by auction-purchaser for possession.
 - 17. Application for final decree in partition suit.
 - 18. Application for restitution.
 - 19. "Civil Court."
 - 20. "Decree."
 - 21. "Order."
- 22. "Not provided for by article 183."
- "Not provided for by section 48 of the Code of Civil Procedure, 1908."
- 24. Registered decree.

CLAUSE 1. .

- 25. Date of decree.
 - Clause 1 not applicable where decree is not immediately capable of execution.
 - Combided decree against person and property, when capable of execution.
 - 28. Decree partly executable at once and partly not.
 - 29. Decree for injunction.

- 30. Decree on which court-fee or etamp-duty is payable.
 - 31. Decree becoming unexecutable by reason of cubsequent evente.
 - 32. Decree on condition to be performed by the decreeholder himself.

CLAUSE 2.

33. Appeal.

- 34. Appeal, whether chould be against the decree or order sought to be executed.
- 35. Appeal against portion of decree, if saves limitation for execution of whole decree.
 - 36. Appeal by or against one person, whether saves limitation for execution by or against another.
 - 37. Irregular or incompetent appeal.
 - 38. Appeal abould have been admitted.
- 39. Appeal from amended decree.
- 40. "Final decree or order."
 - 41. Abatement of appeal.
 - 42. Dismissal of appeal for default, whether gives a fresh atart of limitation for execution.
 - 43. Order returning appeal for presentation to proper Conrt.
- 44. "Appellate Court," meaning of.
- 45. Withdrawal of appeal.
- 46. Starting point under clause 2.
- 47. Who is entitled to benefit of clause 2.

CLAUSE 3.

- 48. "Where there has been a review of judgment."
 - 49. Review in part.

CLAUSE 4.

- 50. "Where decree has been amended."
 - 51. Where amended decree is appealed against.

CLAUSE 5.

- Sta. Where a previous opplication has been made.
- 52. "Application in accordance with law."
 - 53. Application for relief not granted by decree.
 - 64. Application against person against whom execution could not issue.

- 55. Application barred by limitation.
- 55a, Application in respect of person or property ontside jurisdiction.
- 55b. Application for transfer of decree to non-existent Court or to Court without inrisdiction.
- Unstamped applications and applications without the payment of conrt-fees necessary.
- Application for relief in mode not permitted by law.
- 58. Application in respect of decree incapable of execution.
- 58a. Application for execution of conditional decree witbont performing condition.
- Application not accompanied by certificate regulred by law.
- 60. Omission to sign or werlfy application.
- 61. Error in description of snit and names of parties.
- 62. Omission to give, or error in, date of decree.
- 63. Omission to etate whether appeal has been preferred and its result.
- 64. Omission to state previous adjustments.
- 65. Particulars of previous applications not given,
- 68. Omission to mention costs and interest.
- Omission to state mode in which execution is eought.
- 68. Failure to file copy of decree.
- 69. Failure to produce encumbrance certificate.
- Omission to give description of property sought to be proceeded against.
- 71. Defeots in vakalatnama.
- 72. Other defects.
- Application valid only if made by decree-holder or his representative.
 - 74. Application by attaching creditor.
 - 74a. Application by decree-bolder of attached decree or his transferee.
 - 75. Application by Court-of-Wards.
 - Application by person represented in representative snits.
 - Application by etranger claiming to be representative.
 - 78. Application by transferes of decree.

Articls 182

Artiole 182

- 79. Application by agent.
- 80. Application by pleader.
- Application by executor of decree-bolder without probate.
- 81a. Application for execution need not be against the same person or property. 82. Application against legal representative of
 - judgment-debtor.
 - Application where jndgment-debtor is a minor.
 - 84. Application against trustee jndgment-debtor who has ceased to be truetee subsequently.
 - 85. Application against jndgment-debtor who was dead at that date.
 - 86. Application, If need be bona fide.
- 86a. Effect of return, amendment, and rejection of application for execution.
 - 86b. Withdrawal of application.

87. "Proper Court" - General.

- 88. Execution beyond local inrisdiction—Application to Court passing decree, if one made to proper Court.
 - 89. Transfer of decree to another Court for execution — Jurisdiction of transferring Court.
 - 90. Transfer of decree to another Court Jurisdiction of transferee Court.
 - 91. Change in territorial or pecuniary inrisdiction of Court which passed the decree Effect.
 - 92. Court passing decree, ceasing to exist Effect.
 - 93. Appellate Conrt.
 - 94. Temporary Court, decree passed by.
 - 95. Conrt in Native State.
 - 96. Application to Collector.
 - 97. Insolvency Conrt, application to.
 - 98. "Proper Court" Other illustrative cases.
- 99. "Application to take some step in aid of execution."
 - 100. The etep must be in furtherance of execution.
 - 101. The application for step-in-aid must be one in accordance with law and to the proper Court.
 - 102. Step must be one to be taken by the Conrt.
 - 103. There should be an application.

- 104. Plaint, if can be treated as an application. 105. Appeal, whether can be treated as an
- application.
- 108. Application for review of order in execu-

186a. Re-submission of a returned application.

- 107. The step asked for, whether shanld be in aid of a British Indian Conet.
- 108. The step must be with reference to the decree sought to be executed.
- 109. Application for execution, not in accordance with law, may still be regarded as application for step-in-aid.
- 110. Application for step-in-aid does not lie where execution is barred.
- 111. Application for order absolute or for final order,
- 112. Application to appoint a receiver.
- 113. Application for succession certificate.
- 114. Application for confirmation of sale.
- 115. Application for postponement of execution proocedings.
- 116. Application for issue of notice under Order 21 Rule 22. Civil Procedure Code.
- 116a. Application for proclamation of sale under Order 21 Rule 66, Civil Procedure Code.
- 117. Resistance by decree-holder to objections raised by judement-debtor to execution proceedings.
- 118. Payment of process-fee, if step-in-aid.
- 118a. Payment of allowance for the subsistence of the judement-debtor.
- 119. Application by decree-holder for copies.
- 120. Application for execution of attached decree.
- 121. Application for transfer nr re-transfer of decree. if a step-in-aid.
- 122. Application by decree-bolder for leave to bid, if step-in-ald.
- 123. Application for delivery of possession by decreeholder auction-purchaser.
- 124. Cartification under Order 21 Rule 2 of the Civil Procedure Code.
- 125. Application for payment ont of monies lying in Court. ** ...

Article 182

Article 182

- 126. Application for substitution of representatives.
- Application for anbstitution of nams of transferee of decree.
- 128. Other illustrative instances of step-in-aid.
- 129, "Final order."
 - 130. Order transferring decree for execution.
 - 130a. Order returning application.
 - 131. Final nrder need not be in accordance with law.
- 131a. Retrospective operation of amendment of clause 5.

CLAUSE 6.

132. Cianse 6.

CLAUSE 7.

- 133. Clause 7 General.
 - 135. "Payment which the decree or order directs to be made at a certain date."
 - 185. "Gertain date."
 - 136. Instalment decree.

EXPLANATION I.

- 137. Decree in favour of several persons.
- 138. Decree against several persons.
- 139. Judgment-dehtor and his surety Whether application for execution against nne will save limitation against the other.
- 140. Decree for partition.
- 141. Decree partly joint and partly several against several defendants.
- 142. Several persons becoming entitled to, or liable under, decree after it is passed — Effect of application by or against one.

EXPLANATION II.

142a. Explanation Il.

MISCELLANEOUS.

- 143. Revival of application.
- 144. Onus.
- 145. Local or epecial law.
- 146. Effect of bar of limitation.
- 147. Res indicata as applied to questions of limitation in execution proceedings.

Other Topics

Article 182

Amendment of decree-Whether includes amendment of verbal and clerical errors See Note 50, Pts, 3 to 7
Amendment of decree after it is barred.—Whether gives fresh start See Note 50, Pts. 9 to 16
Amendment of decree without prisdiction - Effect See Note 50, Pt 20
'Appeal' in clanse 2 need not be bona fide one See Note 33, Pt. 4
Application by transferee of decree merely for being recognized as transferee
See Note 78, Pts. 10, 11
Application for execution-Meaning of See Note 10, Pt. 4
Application for execution—What is not—Instances See Note 10,
Pts. 5 to 9 & F.N (10)
Application for execution by secured ereditor - Not affected by insolvency
proceedings against judgment-debtor See Note 5, Pt. 3
Application for passing of final decree-Not an application in execution
See Notes 11, 12, 13, 111
Application to British Indian Court to transfer decree to foreign Court for
execution according to laws of the foreign State-Whether step-in-aid
See Note 107
Application to take step-in-aid-Article 181 and not this Article applies
See Note 2, Pt. 4
Article 181 and this Article See Note 2, Pts. 1 to 8
Clause 2-Appeal need not be decided on merits See Note 40, Pts. 8 to 10
Clanse 8-Review should have been granted for applicability of clanse 8
Bes Note 48, Pts. 4, 5
Clause 5-Applicability of-Conditions necessary See Note 51a
Construction of this Article See Note 2, Pts. 7 to 13
'Date of amendment'-Meaning See Note 50, Pt. 19
Decree against several defendants-Appeal by one of them alone-Effect
See Note 85, Pt. 4
Decree directing payment 'within' a certain period-Whether comes within
clause 7 See Note 185, Pt, 8
Decree not capable of execution-Article 182 does not apply See Note 11, Pt 1a
Decree not capable of execution on date of decree but becoming executable
subsequently—Limitation See Note 26, Pte, 2 to 4
Decree of Revenue Court-Application for execution-Whether Art. 182 applies
800 Note 19
Ex parte decree-Application to set aside dismissed-Appeal from each order
-Limitation for execution of exparts decree-Starting point . See Note 34,
Pts. 6, 7
Insolvency of decree-holder - Period of insolvency proceedings cannot be
excluded See Note 5, Pt. 2
Instalment decree with default clause - Application for enforcement of
default clause-Clause 7 does not apply See Note 136, Pts. 3, 4
Instalment decree with default clause—Application for enforcement of default
clause-Starting point See Note 136, Pts. 6 to 8
Instalment decree with default clauseApplication for instalments within three
yeare of application but after three years of earliest default See Note 136,
Pts. 9 to 11 and 13 to 15
Limitation suspended against one of judgment-debtors on account of his insol-
vency-It will not be suspended against others also See Note 133, Pt 13
Order returning application for amendment-Whether 'final order' within
clause 5 See Note 129, Pts 16 to 20
Order striking off proceedings-Effect See Note 143, Pts 8 to 14
Proceeding against wrong person as legal representative of judgment debtor
See Note 82, Pts 1a to 4
Relicf not possible to be granted for want of partieulars-Application not one in
accordance with law See Notes 52, 72
Revenue Court-Whether Civil Court See Note 19
Step-in-aid—Whether pending execution application necessary See Note 100.
Pts. 5 to 9
Step-in-sid of execution—Essentials See Note 99

Legislative changes.

1. Law prior to 1859 :

Before the Act of 1859 was passed, there was no specific provision in any of the Regulations in force in the various Provinces prescribing any period of limitation for applications for the execution of decrees and orders. But the Courts adopted, as a matter of practice, a twelve years' rule of limitation in such 1 22220

2. Law under the Act of 1859 :

The Act of 1859 introduced provisions prescribing period of limitation for the execution of judgments, decrees and orders. By Section 20, it was provided that no process of execution should issue to enforce any indiment, decree or order unless the application for execution was made within three years -

- (a) of some proceeding taken to enforce such judgment, decree or order, or
- (b) of some proceeding taken to keep the same in force.3

Articia 182 - Note 1

- 1. (1865) 5 Suth W R (Misc) 8 (9), Prosunno Coomar Ghose v. Sham Lal Gungopadhya.
 - (1818) Select Reports by Macnaghten, Volume 2, page 860.
- 2. (1866) 6 Suth W R (Misc) 17 (18). Kool Chunder Chuckerbutty v. Rumul Chunder Roy.

(1876) 1876 (1867) 7 St

(F

. 4. 718 (The decree

R 992: berroda. 1 appeal

1

- (1860) 2 All 792 (798) . 6 Cal L R 561 . 7 Ind App 167 : 8 Shome L R 211 : 4 Ind Jur 426 . 3 Suther 761 : 4 Sar 157 (P C), Hira Lal v. Badri
- (1874) 21 Suth W R 97 (100) : 13 Beng L R 160 (P C), Benoderam Sen v. Brojendra Naram Roy.
- (1874) 22 Suth W R 512 (516, 517) : 14 Beng L R 143 (F B), Eshen Chunder Bose v. Prannath Nag.
- (1870) 13 Suth W R 44 (48) : 4 Beng L R 101 (F B), Kristo Komul Singh v. Hurce Surdar.
- (1870) 13 Suth W R S (4, 5) : 4 Beng L R 82 (F B), Rhedoy Krishna Ghoss v. Koylash Chunder Bose.
- As to what are proceedings in that Section, see the following cases: (1870) 18 Moo Ind App 479 (488) . 14 Suth W R 21 : 5 Beng L R 611 : 2

In the case of summary decisions and awards of Civil Courts, an exactly similar provision was made by Section 22 but with

Article-182 Note 1

22 classify and project to the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the contr	
Augmont of the text of the south of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the seco	~ Cling of n due
	(Do)
	ullick
	"pro-
	barred
	might
to have been a second to the man	Roy.
(A decree-holder should do something more than the mere of a petition for execution to keep alive his decree)	presentation
(1866) 6 Suth W R (Misc) 63 (63), Luckhee Naramy, Ram Chan	d. (An appli-
cation for execution followed by issue of notice was a proce-	eding to keep
(1866) 6 Snth W R (Misc) 37 (37, 38), Chunder Coomar Roy v. R	ance Shurut
Soondures Debia (An application for execution merely,	
notice of it to the other party, is not a proceeding white decree alive)	ich Respa tne
(1881) 1881 Bom P J 151, Sabaje v Ganesh (An application of	nly for costs
cannot be deemed to be a bona fide endeavour to ge enforced.)	t the decree
(1872) 18 Suth W R 190 (191), Kalla Chand Paul v. Makara,	jah Dheeraj
Mahatab Chand Bahadur. (A "proceeding" under S 20	of Act 14 of
1859 must be a proceeding which is not at the time ba	tred by 11m1-
(1809) 11 Suth W R 209 (209), Radhoo Chowdhram v. Heet Lal	l Ron.
(1871) 19 Suth W R 955 (950) . 14 Pens L R 425 (Note). Nady	Hossein v.
Pearoo Thot darines. (The proceeding need not be by a p and rightfully entitled to the decree)	erson legally
(1869) 12 Suth W R 436 (438); 4 Beng L R A C 1, Khaja Abde N. P. Pogose.	oci Ganns v.
(1871) 5 Mad H C R 458 (456), Kendiga Mads Chetts v Soobban	
(1874) 21 Suth W R 188 (188) . 13 Beng L R App 1. Sheikh I Radhu Shah (1868) 10 Suth W P 200 (202) Mahamal Sama Piana	
Chowdhry	N 3/E
(1866) 5 Suth W F Chowdhru	· ath
served on a judgment-debtor is not a process to enforce a d	
(1869) 3 Beng L. R. App 33 (84). Bhubanesware Debe . Mah Chowdhry. (Resistance to appeal or review is a proceeding	endra Nath
(1866) 5 Suth W R (Misc) 19 (19), Sund Khan v Jumal Bibec.	(Do)
(1668) 4 Mad H C R 32 (40), Varasamy Mudala v. Manome	any Ammal.
(Decree-holder resisting an application by Indgment-debto decree is not proceeding to keep decree alive)	r to set aside
(1870) 18 Suth W R 208 (208), Poornanund Surkhel v Huro So (1866) 6 Suth W R (Misc) 95 (95, 96), Ram Rutten Banerjee v.	ondur1
Ammeroolmolk Bunuaree Gound Bhadur	Manarajan
(1672) 18 Suth W R 7 (8), Bukronath Chuckerbutty v. Raja Singh Deo	h Nilmonee
(1871) 16 Suth W R 299 (300), Kultyanund Koondoo v. Nugeni Ghose,	dro Chunder
(1867) 7 Suth	
(1866) 6 Sath	
Bullub (1805) 2 Suth W R (Misc) 3 (4), Kashee Pershad Poy v Shib C	hunder Deb.
(Do) (1867) 7 Suth W R 515 (519) Peng L R Sup Vol 709 (F B), Ka	
Ghosal v. Bonomallee Mullich (Do)	

this difference that the period of limitation was one year and

- (1866) 6 Suth W R (Misc) 14 (15), Ram Coomar Chowdhry v. Brojessures Chowdhrain. (Do)
- (1872) 1872 Pun Re No 9, Ram Singh v. Badan Singh. (Do.)
- (1865) 4 Suth W R (Misc) 24 (24), Shureefoonissa v. Raj Kishen. (Do.)
- (1874) 23 Suth W R 31 (83), Pearce Scondurce Debia v. Bhubo Sconduree Debia, (Do.)
- (1871) 15 Suth W R 207 (208), Radha Gobind Shaha v. Brojendro Coomar Chandhry, (Do.)
- Chowdhry. (Do.) (1869) 11 Suth W R 205 (206): 7 Beng L R 706 (Note), Tufuszul Hossen Khan v. Bahadur Singh. (Do.)
- (1874) 1874 Pun Re No. 16, Hansraj v. Harbaksh. (Do)
- (1868) 9 Suth W R 240 (241), Mohesh Chunder Biswas v. Taramonee Dasse. (Proceeding against some only of judgment-debtors.)
- (1874) 1874 Pun Re No. 38, Sarjan Mal v. Mamu. (Do.)
- (1871) 1871 Pun Re No. 53, Kurm Chund v. Gohul Chund. (Where a decree is for land in two villages, execution of it in respect of land in one village is a proceeding to keep the decree in force in respect of land in the other village.)
- (1868) 9 Suth W R 330 (331), Obboy Churn Duit v. Modhoo Soodun Chowdhry. (Notice under S. 216, Civi) Procedure Code of 1859)
- (1866) 5 Suth W R (Misc) 5 (5), Girjanund Oopadhya v. Chuder Binode
- Copadhya. (Do.) (1866) 5 Suth W R (Misc) 5 (5), Sham Chand Bysach v. Lucas Theodors Lucas.
- (1884) 11 Cal 55 (59, 60), Becha Ram Dutta v. Abdul Wahed. (Proceedings in resistance of a claim to attach properties are proceedings.)
- (1872) Is Suth W R 463 (463), Khajah Mahomed Hossein Khan v. Syud Lootf Als Khan
- (1860) 11 Suth W R 8 (9). Ram Soondur v. Ram Kanto. (Rateable distribu-
- tion -- Proceedings in.)
 (1866) 6 Suth W R (blue) 43 (43), Fuzcelutoonssa v. Chultur Dharee Singh(Attempt at settlement of accounts in Court is sufficient to keep a
- decree alive.)
 (1870) 13 Suth W R 141 (142): 4 Beng L R A C 158, Naunhee Koonwar V.
 Kustooree Koonwar. (Precept to the Collector under clause 2 of S. 24.

Regulation 48 of 1793, for mutation of names in the terms of a decres

- was a process to enforce the decree.)
 (1868) 10 Suth W R 337 (338), Leak v. Daniel. (Transmission of decree for
- execution.) (1866) 6 Snth W R (Misc) 60 (60), Maharayah Dheraj Mahatab Chund Bahadoor v Dino Moyee Debia. (Do.)
- (1867) 8 Suth W R 320 (321), Mudun Bhukut v. Dooar Bharatee. (Do.)
- (1860) 5 Suth W R (Misc) 16 (16) Wym 109, Anund Mohun Surma Mojoomdar v. Huro Chunder Bhuttacharjee. (Do.)
- (1879) 2 All 285 (286), Raghu Ram v. Dannu Lal. (Do.) (1867) Agra F B 156 (157) (F B), Telley v. Peet Singh. (Consent of the decree-
- holder to the striking off of an attachment is not a proceeding to enforce a decree. [187] I All See [188] Fahir Muhammad v. Ghulam Hussain. (An
- application by the decree-holder for the stay of execution proceedings

 (1866)

ith cep

- (1863) 10 Suth W R 240 (240), Naram Acharjee Choudhry v. Mohamaya Debia Choudhram. (Proceedings between assignee of decree against
- third party.]
 (1868) 10 Suth W R 127 (127), Brojo Lall Puramanick v. Ram Tarun Gossam. (Steps taken towards placing the assignee of a decree in the produce of the original decree-holder did not constitute proceedings to enforce, or to keep in force, the decree.)

not three.3

The said two provisions were not to apply to judgments, decrees and orders in force at the time of the passing of the Act of 1859. As to these, process of execution could issue either within the time limited by law then in force or within three years (two years in the case of summary decisions and awards), next after the passing of the Act, whichever should first expire 4 (Sections 21 and 23.)

- (1873) 5 N W P H C R 100 (101), Aboo Imam v. Bence Ram. (Uncertified payment of instalments is not a proceeding.)
- (1873) 19 Suth W R 226 (227), Baboo Nath Jha v. Khuqput Doss.
- (1868) 3 Agra (Misc) 5 (5), Nawab Ammenood Deen Khan v. Moozuffer Hussein Khan.
- (1869) 11 Suth W R 210 (211), Prosumo Chunder Roy v. Mookoond Pershad Poy. (Defending claim suit.)
- As to the starting point under that Section, see the following cases;
- (1868) 4 Mad H C R 260 (261), Ramanuja Aiyangar v. Venkatacharry, Lumitation runs not from the date of a former application for process of execution to enforce the decree but from the date of the order upon the application.)
- (1871) 15 Suth W R 51 (51), Brojungona Dassee v. Shona Moolhee Dasses.
 (Do.)
- (1879) 18 Suth W R 76 (77) 11 Beng L R 23 (P C), Dhunput Singh Roy v, Mudhomotice Debia. (Do)
- (1869) 5 Eom H OR A O 214 (215), Bapurou Krishne v. Madhavav Ramrau, (Tims would run from date of appellate order where there has been appeal.)

(1866) 2 Agra 237 (238), Sheo Jalum v Gunesh.

- [1886] S Suth W R (Misc) 63 (63), Makarajah Dhiraj Mahalab Chund Bahadoor v Baboo Buloram Singh. (But the striking off of a case is not an act in furtherance of execution)
- (1866) 6 Suth W R (Misc) 63 (64), Tarinee Churn Gangolly v Tiluck Chunder Ghoso
- 3. (1884) 10 Cal 196 (204) * 7 Ind Jnr 550 13 Cal L R 385, 10 1nd App 119 4 Sar 454 (P C), Mina Kantears v. Jugget Selans.

General of India]

(1863) 5 Bom H C R A C 102 (107), Malunda Balacharya v. Silaram. (Do.) (1870) 13 Suth W R (F B) 5 (5) 4 Beng L R 82 (F B), Rhedoy Krishna Ghose v Koylash Chunder Bose (Do.)

• 7 :

(1866) 5 Suth W R (Misc) 20 (21), Barada Debia v. Sreeram Chowdhry.

this difference that the period of limitation was one year and

- (1866) 6 Suth W R (Misc) 14 (15), Ram Coomar Chowdhry v. Brojessures Chowdhrain. (Do.)
- (1872) 1872 Pun Re No. 9, Ram Singh v. Badan Singh. (Do.)
- (1865) 4 Suth W R (Misc) 24 (24), Shureefoonissa v. Raj Kishen. (Do)
- (1874) 23 Suth W R 31 (83), Pearce Soonduree Debia v. Bhubo Soonduree Debia. (Do.)
- (1871) 15 Suth W R 207 (208), Radha Gobind Shaha v. Brojendro Coomar
- Chowdhry. (Do.) (1869) 11 Suth W R 205 (206): 7 Beng L R 706 (Note), Tufuzzul Hossein Khan v. Bahadur Smah. (Do.)
- (1874) 1874 Pun Re No. 16, Hansraj v. Harbalsh. (Do)
- (1868) 9 Suth W R 240 (241), Mohesh Chunder Biswas v. Taramonee Dasses. (Proceeding against some only of judgment-debtors.)
- (1874) 1874 Pun Re No. 38, Sarjan Mal v. Mamu. (Do.)
- (1868) 9 Suth W R 330 (331), Obhoy Churn Dutt v. Modhoo Soodun Chow-dhry. (Notice under S. 216, Civil Procedure Code of 1859.)
- (1866) 5 Suth W R (Misc) 5 (5), Girjanund Oopadhya v. Chuder Binode Oopadhya. (Do.)
- (1866) 5 Suth W R (Misc) 5 (5), Sham Chand Bysack v, Lucas Theodors Lucas.
- (1884) 11 Cal 55 (59, 60), Becha Ram Dutta v. Abdul Wahed. (Proceedings in resistance of a claim to attach properties are proceedings.) (1672) 18 Suth W R 463 (463), Khazah Mahomed Hossein Khan v. Syud
- Lootf Als Khan. (1869) 11 Suth W R 8 (9), Ram Soondur v. Ram Kanto, (Rateable distribu-
- tion Proceedings in.)
- (1868) 0 Suth W R (Misc) 43 (43), Fuzcelulconista v. Chuitur Dharee Singh. (Attempt at settlement of accounts in Court is sufficient to keep a decree alive.) (1870) 18 Suth W R 141 (142) : 4 Beng L R A C 153, Naunhee Koonwar v.
- Kustooree Koonwar. (Precept to the Collector under clause 2 of S. 24, Regulation 48 of 1793, for mutation of names in the terms of a decres was a process to enforce the decree.)
- (1868) 10 Suth W R 337 (338), Leak v. Daniel. (Transmission of decree for execution)
- (1866) 6 Suth W R (Misc) 60 (60), Maharajah Dheraj Mahalab Chund Dahadoor v. Dino Moyee Debia. (Do.)
- ztee. (Do) (1867) 8 Su (1866) 5 Sn rma 3foroom.
- dar
- (1879) 2 All 285 (286), Raghu Ram v. Dannu Lal. (Do.) (1867) Agra F B 156 (157) (F B), Telley v. Peet Singh. (Consent of the decreeholder to the striking off of an attachment is not a proceeding to
- enforce a decree.) to part a an upa tuon to the Water Muhammad v Ghulam Hussain. (An edings

203320with , keep

alive the decree)

(1868) 10 Suth W R 240 (210), Naram Acharjee Chowdhry v. Mohamaya Debia Choudhrain, (Proceedings between assignee of decree against third party.)

-- - Gosrosis to

not three.3

The said two provisions were not to apply to judgments, decrees and orders in force at the time of the passing of the Act of 1859. As to these, process of execution could issue either within the time limited by law then in force or within three years (two years in the case of summary decisions and awards), next after the passing of the Act, whichever should first expire. (Sections 21 and 23.)

- (1873) 5 N W P H C R 100 (101), Aboo Imam v. Benes Ram. (Uncertified payment of instalments is not a proceeding)
- (1873) 19 Suth W R 226 (227), Baboo Nath Jha v. Khugput Doss,
- (1868) 3 Agrs (Misc) 5 (5), Nawab Ammenood Deen Khan v. Moorusser Hussein Khan.
- (1869) 11 Suth W R 210 (211), Prosunno Chunder Roy v. Mookoond Pershad Roy. (Defending claim snit.)
- As to the starting point under that Section, see the following cases:
- (1868) 4 Mad H C R 260 (261), Ramanuja Asyangar v. Venhatacharry, (Limitation runs not from the date of a former application for process of execution to enforce the decree but from the date of the order upon the application.)
- (1871) 15 Suth W R 51 (51), Brogungona Dassee v. Shona Mookhee Dassee,
- (1872) 18 Suth W R 76 (77) · 11 Beng L R 23 (P C), Dhunput Singh Roy v. Mudhomettee Debia. (Do)
- (1868) 5 Bom H CR A C 214 (215), Bapurau Erishna v. Madhatrav Ramrau. (Time would run from date of appellate order where there has been appeal.)
- (1866) 6 Suth W R (Misc) 63 (63), Makarajah Dhiraj Makatab Chund Bahadoor v Baboo Buloram Singh. (But the striking off of a case is not an act in firtherance of execution).
- (1866) 6 Suth W R (Misc) 63 (64), Tarinee Churn Gangolly v. Tiluch Chunder Ghose.
- 3. (1884) 10 Cal 196 (204) 7 Ind Jut 550 13 Cal L R 885 10 Ind App 119 : 4
 Sar 454 (P C), Mana Kantrars v. Jugaat Selans.
 - passing of Act 14, or without curtailing the period within which limitation under that Act bars a claim to revive a decree passed before the passing of the Act)
 - (1866) 3 Bom H C R A C 175 (176), Exparte Kalidas Damodhar. ("At the time of the passing of this Act" in Act 14 of 1839, must be construed to mean the time when the Act received the assent of the Governor-General of India.)
 - (1868) 5 Bom H C B A C 102 (107), Makunda Balacharya v Sılaram. (Do.) (1870) 13 Sath W R (F B) 3 (5): 4 Beng L R 82 (F B), Rhedvy Erishna Ghose v Evylash Chunder Bose (Do.)
 - (1866) 5 Suth W R (Misc) 20 (21), Baroda Debia v. Sreeram Choudhry.

3. Act of 1871:

Articles 167 and 168 of the Act of 1871 dealt with the limitation for the execution of decrees. The former dealt with the limitation for the execution of unregistered decrees, and the latter for the execution of registered decrees and orders.

The fourth clause of Article 167 corresponded to Section 20 of the Act of 1859 and provided that where an application "next hereinafter mentioned has been made," time ran from "the date of applying to the Court to enforce or to keep in force the decree or order."

It may be noted that both the Acts of 1859 and 1871 recognized applications merely to keep in force a decree or order, as furnishing a starting point of limitation. Such an application could not be made under the later Acts.

4. Act of 1877 :

The words "or by the Code of Givil Procedure, section 230" in the first column of Article 179 of the Act of 1877 were newly added. In clause 4 in the third column of Article 179 of the Act of 1877, the words "in accordance with law to the proper Court for execution or to take a step-in-aid of execution" were substituted for the words "to the Court to enforce or to keep in force." The words "payment of an instalment" which occurred in clause 6 of the Act of 1871 were substituted in the Act of 1871, by the words "any payment."

5. Act of 1908:

The words "or the withdrawal of the appeal" were newly added at the end of clause 2 of the Act of 1908. Clause 4 of

- (1867) 7 Suth W R 830 (330), Nowaraja Chowdhry v. Ram Kanaye Doss.
- (1867) 8 Sath W R 88 (88), Deegendur Naram Chose v. Hurkishore Dutt.
- (1867) 7 Suth W R 515 (518): Beng I. R Sup Vol 709 (F B), Kangaleechurk Ghosal v. Bonomallee Mullick.
- (1866) 6 Suth W R (Misc) 39 (40), Huro Nath Boss v. Muddun Mohan Chuckerbulty, (Section 21, Act 14 of 1859, was passed to give extension of time to decree-holders whose decrees would have been barred under the new May).

The three years' persod was from the date of the passing of the Act and not the date of the coming into force thereof. See the following cases:

- (1864) 1864 Suth W R (Misc) 27 (27), Baboo Roghoonath Pershad v. Mt. Velaettee Begum.
 - (1864) 1 Suth W R (Misc) 9 (9), Lulleet Ram v. Saligram Singh.
 - (1868) 4 Mad H O R 148 (149), Vurbhadra Rau v. M. Ramasya.
- (1872) 1872 Bom P J 46, Jethalal v. Narau. (1869) 11 Suth W R 363 (369) : 3 Deng L R A C 40, Bisthu Narayan Dandopadhya v. Ganga Narayan Biswas.
 - padhyo v. Ganga Narayan Biswas. [See also (1866) 6 Suth W R (Misc) 14 (14), Doorgachurn Roy v. Dino Moves Debia.
 - (1866) 5 Suth W R (Misc) 17 (17), Greggory v. Juggat Chuder Bannergee]
- (1876) 25 Suth W R 516 (547), Nelmoney Singh v. Nilcomul Turpadar.
 (1902) 26 Mad 760 (762, 763): 13 Mad L Jour 412, Rungiah Gounden & Co.
 Nanfappa Rose.

Article 182

Notes

the Act of 1908 is oew. Clause 5 of the Act of 1877 was reenacted as clause 6 of the Act of 1908 with certain amendments. 6. Amendments after 1908:

Io clause 5, the words "the floal order . . . made" were substituted by Act 9 of 1927 for the word "applying." Clause 6 was substituted for the old clause 6, which was deleted, in view of the amendment of clause 5 making time run from the date of the final order on applications for execution or to take some step-in-aid of execution.

Act 9 of 1937 came into force oo the 1st January 1928. The amendment will not disturb vested rights. As application for execution of a decree after that date would be governed by the amended provisions, if the right of the decree-holder to execute his decree did not become barred on the 1st January 1928.

2. Scope of the Article.—Article 181, ante, is a general Article applicable to applications for which no period of limitation is provided for elsewhere in the First Schedule. This Article is a special Article dealing with applications for the execution of decrees and orders. Where this Article is applicable, Article 181 cannot be resorted to, the general principle of interpretation of statutes being that a special provision will prevail over a general one. Normally, an application for the execution of a decree or order will be governed by this Article and not by Article 181, and it is only where there are definite circumstances which make this Article inapplicable that Article 181 may apply.

An application for execution is oot the same thing as an application to take a step.nn.aid of execution. This Article does not govero the latter application which will, if oo other Article is applicable to it, he governed by Article 181 * Forther, this Article is not exhaustive of all applications for execution * An application, though for execution, may yet not be covered by any of the clauses in the third

7. (1910) 7 Ind Cas 859 (859) (Mad), Subramania Pillas v. Sankara Subbu

8. (1933) A I R 1933 Mad 85 (85) 140 Ind Cas 500, Nagalingam Pillay v Sitachidambara Sabapathy.

(1930) 34 Cal W N 733 (734), Kanas Lall Sabus v Purnachandra Chat-

(1930) A I R 1930 Pat 207 (207) 127 Ind Cas 572, Sapant Patra v. Damodar Kar.

Note 2

1. See Note 24 of the Preamble to this Act.

 (1935) A 1 R 1935 Pesh 129 (130) 158 Ind Cas 517, Budhu Ram v Mushtaq Shah

 (1929) A T R 1929 All 606 (COS). 114 Ind Cas 894. Mahammad Ishaq v. Baldeo Prasad.

(1905) 10 Cal W N 354 (360) (FB), Apurba Krishna Royv. Chundermoney Debi.

 (1903) 26 Mad 780 (784) 13 Mad L Jour 412, Runjiah Goundan and Co. v. Nanjappa Row.

column of the Article. In such cases, as has been seen in Note 25 to the Preamble, this Article cannot apply, with the result that Article 181 may apply.

The Article should receive a fair and liberal and not too technical a construction so as to enable a decree-holder to obtain the fruits of his decree. Its language ought not to be strained in favor of the judgment-dehtor who has not pand his just deht. Where words are fairly capable of two interpretations, one of which assists the decree-holder to obtain the fruits of his decree, and the other prevents him from obtaining the fruits of his decree, that interpretation which assists the decree-holder should be accepted. As a general rule, the Courts should lean to the view that the application is not harred. But Courts should not, in their anxiety to prevent justice heing defeated by technicalities, overlook the danger of introducing uncertainty in the law by reason of such interpretation. To condone the laches of the decree-holder when the application is clearly harred by limitation. In the words of their Lordships of the Privy Council in Machul Almad v. Onkar Pratab Narain Singh. In 1811 in possible

- (1933) A I R 1933 Ondh 209 (212, 213); 143 Ind Cas 803; 8 Luck 427, Shyam Lal v. Nasiruddin Beg.
- (1903) 26 Mad 780 (789): 18 Mad L Jour 412, Rungiah Goundan and Co. v. Nonjappa Rov.
 Sox also Note 26, in fra.
- 7. (1033) A I R 1938 Mad 323 (324): 178 Ind Cas 749, Annapurnamma v. Venkamma.
 - (1016) A I R 1916 Mad 728 (730): 39 Mad 923: 30 Ind Cas 707, Varadaraja Mudali v. Muragesam Pillai,
 - (1927) A Î R 1927 Nog 303 (309): 103 Ind Cas 279 : 24 Nag L R 36, Ramchandra v. Ula. (1912) A I R 1919 All 390 (390): 41 All 479 : 50 Ind Cas 143, Babu Ram v.
 - Pearey Lat. (1918) A I R 1918 Mad 620 (621): 41 Mad 251: 41 Ind Cas 701, Masila-
 - man: Mudaliar v. Sethuswami Iyer. (1916) A I R 1916 Mad 729 (730): 89 Mad 923: 30 Ind Cas 707, Varadaraja
 - Mudals v. Murugesam Pellas. (1900) 27 Cal 709 (712): 4 Cal W N 681, Sariatoolta Molta v. Raj Kumar.
- (1912) 16 Ind Cas 870 (371) (Cal), Balaram Das Bhagat v. Raja Mukanada Deb.
- (1882) 5 Mad 141 (143), Kunha Mannan v. Seshagira Bhakthan.
- 8. (1938) A I R 1938 Mad 323 (324): 178 Ind Cas 749, Annapuranamma v. Venhamma.
- (1909) 1 Ind Cas 57 (60) (Cal), Manorath Das v. Ambica Kanta Bose. See also cases cited in Foot-Note (7) above.
- (1936) A I R 1936 Sind 138 (139): 30 Sind L R 59: 161 Ind Cas 1011, Kishinchand Bulamal v. Dhaniram Jamnadas.
- 10. (1913) 18 Ind Cas 236 (237) (Lah), Wals Ram v. Bhagwan Das.
- (1019) A I R 1018 Mad 520 (621): 41 Mad 251: 41 Ind Cas 701, Manlamani Mudaliar v. Sethussami Iyer.
 (1022) A I R 1929 Mad 79 (81). 45 Mad 456: 70 Ind Cas 321, Kuppusscami
 - 1922) A 1 R 1922 Mad 79 (81), 45 Mad 466; 70 Ind Cas 321, Kuffustamer Chettian v. Rajagopala Iyer.
 [See also (1918) 35 Mad L Jour 38 (33) (N 1 C). (Critical Note on
- (1918) 41 Mad 251 . A I R 1918 Mad (20.)] 12. See (1923) A I R 1923 Sind 14 (15) : 73 Ind Cas 311 : 17 Sind L R 255,
- Sakerchand Narsidas v. Faccoob.

 13. (1935) A I R 1935 P C 85 (88): 155 Ind Cas 205: 62 Ind App 80: 87 All 224 (P C).

to bold that in a matter which is governed by Act, an Act which in some limited respects, gives the Court a statutory discretion, there can be implied in the Court, outside the limits of the Act, a general discretion to dispense with its provisions"

3. Applications by Government. — Section 17 of the Act of 1829 exempted from the operation of the Act, "any public claim whatever." Such claims continued, by the terms of the Section, to be governed by "the rules and laws of limitation now in force" It was held in the undermentioned case," under the Act of 1859, that an application by the Government for the recovery of stamp duty by attachment and sale of the property of the porson liable to pay such duty, was governed by the old rules of limitation in force at the time of the passing of the Act, which provided a period of sixty years for such matters," and was therefore not barred.

There is no reservation in the later Acts in favour of the Government in the matter of acceution proceedings. An application by the Government for execution must be made within the period presented by this Article ³ Thus, an application by the Government to recover court-fees from a party is subject to the came period imitation as the right of a subject to enforce a decree or order.

5. Extension of time under the Sections of the Act. — The Articles in the Schedule must be read subject to the provisions of Sections 4 to 25 of the Act (see Section 3). In computing the periodial limitation prescribed by this Article, therefore, regard must be bad to the provisions of Sections 4 to 25, where such provisions are applicable to the particular application.¹

Note 3

- 1. (1875) 8 Mad H C R 40 (43), Collector of South Arcot . Thathacharry.
- 2. See Madras Regulation II of 1805, Section 2, clause 1.
- 3 (1874) 22 Suth W R 512 (512) (F B), Collector of Beerbhoom v Sreehury
 - Chuckerbutty (512) (F B), Consector of Beerghoom V Sreenur
- (1883) 7 Bom 552 (553) (Notes), Venubas v Collector of Nassh (1881) 4 Mad 155 (156), Appaya v. Collector of Vizagapatam.

Note 4

1. Applicability of Section 4:

•"

See Note 1 to Section 4.
Applicability of Section 5

See Note 3 to Section 5.

Annicability of Section 6:

See Notes 14, 15 and 35 to Section 6 and Notes 5, 6 and 15 to Section 7 and also the undermentioned cases

(1925) A I R 1925 Cal 1216 (1218) 85 Ind Cas 1007, Bijoy Cand Mahatab v. Nilmoni Lahiri (Disability must cust when cause of action arises) (1902) 1903 Pun L R No. 131 1902 Pun Re No. 100, Allah Bakhih v. Bha.

teams (Subsequent disability does not affect the running of time)

irsicami dyya v.

Exclusion of time by reason of adjudication in Insolvency. — Section 78, sub-section 2 of the Provincial Insolvency Act, 5 of 1920, provides as follows:

"Where an order of adjudication has been annulled under this Act, in computing the period of limitation prescribed for any suit or application for the execution of a decree (other than a

(1911) 12 Ind Cas 503 (505) (Mad), Duraiswami Sastrial v. Venhatarama

Iyer. (1934) A 1 R 1934 Cal 1 (3): 149 Ind Cas 1062, Satis Chandra Sen v. Jiwan

Lal Daga.

Applicability of Section 12:
See Note 3 to Section 12.

Applicability of Section 14:

See Note 5 to Section 14, ante and the undermentioned cases:

(1890) 1890 Pun Re No. 154, Mihr Jang Khan y. Fajzulla Khan. (Pro-

ceeding must be between the same parties)

(1923) A I R 1929 Rang 98 (98) : 79 Ind Cas 284, F. N. Burn v. G. H. Paul. (Proceeding must be for the same relict.)

(1887) 1887 All W N 198 (199), Madho Rai v. Rajkali Kuar, (The previous application must have been infractions by reason of want of jurisdiction.)
(1901) 29 Cel 298 (241): 5 Cal W N 150, Sheik Jafar v. Kamalini Debi. (Do.)

(1880) 2 All 792 (797). 7 Ind App 167: 6 Cal L R 561: 4 Sar 187: 8 Shome L R 211: 4 Ind Jur 426: 8 Suther 761 (P C), H₁ra Lai v. Eadrs Das. (Do.)

(1917) A I R 1917 All 370 (370): 39 Ind Cas 796, Ram Jas v. Ram Naram.

(1909) 2 Ind Cas 102 (105) · 1909 Pun Re No. 52, Peachey v. Punjab Banking Company, Limited, Lahore.

Applicability of Section 15:

See Notes under Section 15, ante and the undermentioned cases :

(1926) A I R 1926 Mad 698 (699): 95 Ind Cas 718, Lalumia v. Masur Hannisa. (Collateral proceeding—Time taken cannot be deducted.)

(1933) A I R 1933 Mad 418 (420) : 56 Mad 490 : 143 Ind Cas 1 (F B), Trepura Sundaramma v. Abdul Khader. (Do.)

> "ovardkanthe period

Dhar. (Do.) (1884) 1884 Pan Re No. 77, Kurta Ram v. Karthis Mal. (Order granting

time for payment is not order staying execution.)
Applicability of Section 19 ante:

See Note 63 to Section 19 and the undermentioned cases:

(1924) A I R 1924 Nag 147 (148): 79 Ind Cas 66, Daji Mahar v. Mahader Kunbi. (A letter by judgment-debtor to decree-holder acknowledging his liability to pay the decretal amount is an acknowledgment within Section 19 and sayes limitation for execution.)

(1933) A I R 1933 All 864 (366) · 55 All 393 : 146 Ind Cas 836, Adya Prasad Singh v. Lal Gyrish Bahadur Pal. (Do.)

(1930) A I R 1930 Cal 301 (303): 121 Ind Oas 830, Hatimulla v. Sukhamoy Chaudhurs (Acknowledgment of portion of the amount will save limitation as to whole.)

(1912) 13 Ind Cas 603 (604) (Cal), Ram Pal Singh v. Nandlal Marwars-(Insolvency petition specifying debt is a sufficient acknowledgment.)

(1937) A I R 1937 Mad 700 (763): 174 Ind Cas 28, Appa is Chetts v. Cocundaaams Reddi. (Oral admission of payment in Court, and recorded by Court is not sufficient.)

suit or application in respect of which the leave of the Court was obtained under sub-section 2 of Section 28) which might have been brought or made but for the making of an order of adjudication under this Act, the period from the date of the order of adjudication to the date of the order of annulment shall be excluded.

"Provided that nothing in this Section shall apply to a suit or application in respect of a deht provable but not proved under this Act."

It follows that in cases of intervening insolvency of the judgment-debtor the period during which the adjudication lasts will be excluded in computing the period of limitation for the excention of the decree against him. But the benefit of the exclusion of time under the said Section is available only where execution is sought against an insolvent judgment-debtor and not where the insolvent is a decrealized whose decree is sought to be executed. An application for execution by a secured creditor is not affected by the insolvency proceedings against the judgment-debtor and consequently the period of insolvency cannot be excluded under Section 78 in computing the period of limitation for the application for execution 3

6. Exclusion of time under Para. 11 of Schedule III of the Code of Civil Procedure. — Paragraph 11 of Schedule III of the Code of Civil Procedure runs as follows:

"1. So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on lim by paragraphs 1 to 10, the judgment-debtor or his representative in interest shall be incompotent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any Civil Court issue any

Applicability of Section 20:

See Note 30 to Section 20 and also the following cases

(1933) A I R 1933 Mad 674 (674) 147 Ind Cas 586, Chathulutty v. Raman (Payment by one of several judgment debtors on behalf of

others \

- (1932) A 1 R 1932 Oudh 69 (70) 134 Ind Cas 676 7 Luck 397, Nahched Shah v. Rashmiri Bank, Pyzabad.
 - (1930) A I R 1930 All 580 (582) 126 Ind Cas 16, Sita Fam v. Rishan Lal.
 (1924) A I R 1924 Pat 40 (40) 79 Ind Cas 696, Akhan Ehalifa v. Ramlal
 - (1923) A I R 1924 124 40 (40) 49 486 Cas 696, Akada A Andrija V. Ramiai Markari. (1931) A I R 1931 Pat 357 (358, 359) 131 Ind Cas 633 10 Pat 422, Het
- Narayan Singh v Brij Nandan Singh. 2. (1929) A I R 1929 Mad 715 (716, 717) 121 Ind Cas 455, Fama Pillas v. Kasamuthu Nadar.
- (1929) A I R 1929 Oudh 71 (72) 113 Ind Crs 86 4 Luck 241, Siri Eam Kuar v. Ram Prasad Ghosh.

process against such property or part in execution of a decree for the payment of money.

- "2. During the same period no Givil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under paragraph?
- "3. The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this paragraph in respect of any remedy of which the decree-holder has been temporarily deprived."
- It was held in the undermentioned cases' that where the immovable property of the judgment-debtor was placed under the management of the Collector under the above paragraph, limitation for execution would be suspended for the period during which the property was under such management.
- 7. Exclusion of time nuder Section 3 of the Chota Nagpur Encumbered Estates Act (6 of 1876).—Section 3 of the Chota Nagpur Encumbered Estates Act, 1876, provides that as soon as an estate is taken charge of under the said Act, all proceedings pending in Givil Courts in respect of the debts of the disqualified owner shall be harred. But, under Section 12 of the Act, the debts so barred are revived when the estate is released. A decree-holder obtained a decree against the judgment-debtor on 19th April 1905. The estate of the judgment-debtor was in charge of the Encumbered Estates Department from 23rd May 1906 to 21st April 1908, on which last date it was released. The decree-holder applied for execution of bis decrees ou 13th February 1909. It was held that the application was within time.³
- 8. Application to execute decrees of Native States. —It is a general principle of international law that all matters of procedure are governed only by the lex fori, or the law of the forum in which the action is brought. Questions of limitation, being essentially matters of procedure, are governed only by the lex fori. Thus, if an application for execution of a decree, passed in a Native State, is made to a British Indian Court, it will be governed by this Act, and if it is barred thereunder, will be dismissed even though it may be within time according to the law of limitation applicable in the Native State, in which the decree was obtained.

Note 6

 ^{(1910) 8} Ind Cas 877 (278): 13 Oudh Cas 303, Mohammad Abdul Karim Khan v. Nawar Singh.

^{(1910) 7} Ind Cas 860 (860) (Mad), Pamara Kumara Thummanayannu v. Ranga Bhupala.

^{(1898) 20} All SS3 (385) : 1893 All W N 82, Gurdhar Das v. Har Shanlar Prasad.

^{1. (1910) 7} Ind Cas 787 (789) · 38 Cal 289, Protab Udas Naram v. Madan Mohan Nath.

For further discussion, see Section 11 Note 2 ante and also the undermentioned case.1

9. Transfer of decree from nne Court to another—Limitation for execution of.—Where a decree is transferred for execution to another Court under Section 43, Cirul Procedure Code, and the two Courts are governed by different rules of limitation, the law applicable to an application for execution made to the transferce Court depends not on the character of the Court which executes the decree, but of the Court which passed it, though the manner of execution is that of the Court which executes the decree. I Thus, where a decree of a mulfassil Court is transferred for execution to the Original Side of a Chartered High Court, the application for execution of such decree is governed by this Article and not by Article 183, infra. As to the converse case of a decree passed on the Original Side of the High Court transferred to a muffassil Court, see Noto 2, Pt. (1) to Article 183, infra.

10. "Application for the execution of any decree or order." — Execution is the enforcement of decrees and orders by process of Court so as to enable the judgment-creditor to recover the fruits of the judgment. The modes in which the Courts can execute their decrees and orders are set forth in Part II and Order 21, Schedule 1 of the Code of Chul Procedure.

The Acts of 1859 and 1871 referred to applications "to enforce" the decree or order. It was held in cases coming under those Acts that an application to "enforce a decree" was an application "under Section 212 (of the Code of 1859, now Order 21 Role 11) or otherwise by which proceedings in execution are commenced and not applications of an incidental nature made during the pendency of such proceedings." Thus, an application for the issue of a warrant pending an application for execution, was held not to be an application to "encree the decree." An "application for the execution of a

Note 8

 (1868) 10 Suth W R 10 (12). Beng L R Sup Vol 970 (F B), T. Leake v. W. Daniel.

Note 9

(1890) 17 Oal 491 (497), Tincowrie Dawn v Debendra Nath Mooherjee.
 (1896) 24 Cal 473 (491), Jogemaya Dawn v Thackomoni Dawn
 (1888) 10 Suth W R 10 (12) Rong L R Sup Vol 970 (F B), Leake v Daniel.

2. (1890) 17 Cal 491 (497), Tencourse Dawn v. Debendra Nath Mochengee,

Note 10

- (1882) 9 Cal 773 (776, 777): 7 Ind Jur 650, Sreenath Roy v. Radhanath Mookerjee.
- 2. (1878) 2 Mad 1 (4) 3 Ind Jur 208, Probakara Row v. Potannah.
- (1877) 3 Cal 235 (242) 1 Cal L R 23 2 Ind Juz 400 (F B), Chunder Coomar Roy v. Bhogobutty Prosonno Roy.
- 3. See cases cited under Foot-Note (2).

Article 182 Notes 8-10

decree or order" must, it is conceived, he similarly interpreted, and must be taken to mean an application under Order 21 Rule 11 or otherwise by which proceedings in execution are initiated,4 and not other applications made pending an execution proceeding, though such applications may prerate as steps-in-aid of execution.

It has been beld that an application under the Civil Procedure Code. Order 21 Rule 50, snb-rule 2 for leave to execute a decree (obtained against a firm) against a partner who was not personally served in the snit, is merely ancillary to an application for execution against him, that the latter application is governed by Article 182 and that so long as such application is not time, harred under that Article, the application for leave also will not be barred.43 In the undermentioned case, to an application for leave itself was held to be an application for execution within Article 182.

The following applications are not applications for the execution of a decree or order :-

- 1. Application by a person merely for his being recognized as a transferee of a decree without a prayer for execution.5
 - 2. Application for the transfer of a decree.6
- 3. Application by the decree holder for the postponement of the execution sale on the ground that he had given time to the undgment debtor.7
- 4. Application to Court to direct Collector to expedite partition proceedings.8
- 4. (1896) 18 All 482 (491) : 1896 All W N 142 (F B), Rahim Ali Khan v. Phul
- 4a (1932) A I R 1932 Bom 516 (519) : 140 Ind Cas 519, Bhagwan Manaji v. Hiraji Preman.
 - (1931) A I R 1931 Lah 736 (739) : 13 Lah 827 : 134 Ind Cas 1026, Bombay Company Lamited, Karachi v. Kahan Singh.
- (1935) A I R 1935 Mad 926 (926): 158 Ind Cas 907, Kuppuswamy Iyer v. Ratilal Somabhas and Company.
- 4b(1936) A I R 1936 Sind 198 (198, 139) : 30 Sind L R 68 : 164 Ind Cas 1011, Kushin Chand Boota Mal v. Dhaniram Jamnadas. (Dissenting from A I R 1930 Sind 180.)
- 5. (1912) 14 Ind Cas 704 (705) (Mad), Somamma v. Basamma.
- 6. (1935) A I R 1935 Lah 508 (510) : 17 Lah 13 : 158 Ind Cas 127, Ders Das v.
 - Mohammad Akbar Khan. (1926) A I R 1926 AH 93 (91): 90 Ind Cas 274: 48 All 121, Mt. Begam Sul-
 - tan v. Mt. Sarts Begam. (1926) A I R 1926 All 473 (474) : 91 Ind Cas 482, Mt. Sahodra v. Bhagwan-
 - (1911) 9 Ind Cas 246 (216, 247) (Cal), Raj Kumar Sen v. Annoda Charan. (1897) 20 All 78 (79) : 1897 All W N 169, Sundar Singh v. Doru Shanlar.
 - (1895) 22 Cal 921 (923), Suga Hossem v. Manohur Das.
 - (1922) A 1 R 1922 Cal 3 (1) . 63 Ind Cas 116, Hazars Lal v. Baulyanath
- Saha. (1929) A I R 1929 All 390 (392): 115 Ind Cas 865, G. Atherton & Co. v. Habib Bakhsh.
- 7. (1881) 3 All 757 (758) . 1881 All W N 50, Mamath Kuars v. Debi Bahhsh
- 8. (1914) A I R 1914 Sind 97 (98) : 8 Sind L. R 935 : 29 Ind C1s 58, Harun Khan Rahim Khan v. Tejumal Parsomal.

 Application for attachment under Section 46 of the Civil Procedure Code.⁹

See also the undermentioned cases.19

Under the provisions of some special Acts, some demands have to be recovered "as if such demand is a decree of a Civil Court." In such cases the said words have been held to attract the whole procedure in execution with the result that the execution of orders would be governed by this Article."

11. Decree must be capable of execution. — If a decree is not in a form capable of execution, Article 182 does not apply and time does not run under the Act. ¹⁸ In Rameshwar Singh v. Homeshwar

9 (1926) A I R 1926 Cal 249 (250) . 90 Ind Cas 527, Kasswar De v. Aswins Kumar Pal.

 (1925) A I R 1925 All 646 (647); 87 Ind Cas 745, Jaideo Frazad v. Ghass, (The deposit of process fees for the issue of attachment in execution of a decree is not an application for execution.).

(1879) 1879 Bom P J 574, Laldas Golaldas v. Bhagwangs Jugajs. (Do.)

(1875) AT C. AL THE TO BE FORD SEED, THE PROPERTY OF A PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERT

(1883) 5 All 596 (598) : 1883 All W N 143, Shamlaran v. Purs.

(1880) 7 Cal L R 424 (428), Joobraj Sundy N, Buhoora Alumbasse Koer, (Application for sala of property under attachment is not an application for execution)

(1968) 9 Suth W R 300 (391), Ramdhun Roy v. Abdool Gunnee. (Application for restoration of execution case is not an application for execution.)

(1987) A I R 1987 Mad 779 (782, 784) 172 Ind Cas 468, Ramaswams Chettear v. Meyappan Serias. (Application for reland of purchase money is governed by Act 181 and not by Act. 182)

(1904) 27 All 378 (380): 2 All L Jour 16: 1905 All W N 9, Godu Ram v. Suraj Mal.

(1935) A I R 1935 Mad 217 (218)
 156 Ind Cas 747
 58 Mad 760, President
of the Board of Commissioners for H. R. E., Madras v. Shirur
Mutt. (Recovery of contributions under Section 70 (2) of Madras Religious Endowments Act.)

(1989) A. I. R. 1939 Mad 304 (SOI, 305), Subba Rao v. Calicut Co-operative Urban Banh, Ltd. (Award passed by the Registrar under Co-operative Societies Act.)

(1926) A I R 1926 Oudh 289 (289) 93 Ind Cas 631 I Luck 153, People's Industrial Dank Ltd., Allahabad v Mahesh Charan Sinha. (Enforcement of order for contribution under the Companies Act)

(1933) A I R 1933 Sind 78 (79) 142 Ind Cas 489 27 Sind L R 109, Achraj Singh Ram Singh v Achrajram Sahna

Note 11

1a (1921) A I R 1921 Bom 260 (261) 45 Bom 959 . 61 Ind Cas 159, Dayabhas v. Bas U jam.

(1927) A I R 1927 Pat 215 (217) 6 Pat 780 102 Ind Cas 811, Somar Singh v. Deonandan Frasad.
(1893) 1898 Fun Re No 47, But Singh v Chand Singh.

[See (1868) 4 Mad H C R 173 (174), Gopala Setty v. Damodara Setty. (Case under the Act of 1859]] Article 182 Notes 10—11

311

Article 182 Notes 11-12 Singh, their Lordships of the Privy Council observed as follows:

"In order to make the provisions of the Limitation Act apply, the decree sought to be enforced must have been in such a form as to render it capable, in the circumstances, of being enforced."

Applications in respect of a decree which is not in a form capable of execution, as for instance applications for the passing of a final decree in terms of the preliminary decree, are not applications in accountion of the preliminary decree and are not governed by this Article. See Notes 12 to 18, infra.

12. Application for final decree in suits for sale or foreclosure. — Where a decree was passed, prior to the Civil Procedure Code, 1908, under Sections 88 or 88 of the Transfer of Property Act, 1832, an application for an order absolute for sale of the mortgaged property under Sections 87 or 89 of the Transfer of Property Act, was regarded as one for the execution of the decree under Sections 88 or 88, and was held governed, for purposes of limitation, by Article 179 of the Act of 1877 corresponding to the present Article. Under the Civil Procedure Code, 1908, a preliminary

1. (1921) A I R 1921 P C 31 (32): 49 Ind App 17: 59 Ind Cas 636 (P C).

- (1914) A I R 1914 P C 66 (67): 36 All 350: 23 Ind Cas 649 (P C), Chaudri Abdul Majid v. Jawahir Lal.
 - (1922) A I R 1922 P O 167 (190) . 49 Cal 203 : 49 Ind App 335 : 74 Ind Cas 660 (P C), Sachindra Nath Roy v. Maharaj Bahadur Singh.
 - (1890) 13 All 278 (280) : 1891 All W N 63 [F B], Oudh Behari Lal v. Nags-shar Lal.
 - (1902) 25 Mad 244 (265, 269, 298) : 12 Mad L Jour 279 (F B), Mallharjunadu Selli v. Lingamurts Pantulu.
 - (1909) 4 Ind Cas 42 (43) (Mad), Veera Reddy v. Ramalinga Mudaly.
 - (1917) A I R 1917 Mad 669 (669) : 34 Ind Cas 756, Natesa Udayan v. Annasamı Udayan.
 - (1908) 31 Mad 69 (69, 70); 3 Mad L Tim 254; 17 Mad L Jour 506, Pamayyan v. Kadır Bacha Sahıb.
 - (1916) A 1 R 1916 Mad 289 (289, 290) : 29 1nd Cas 237 : 39 Mad 544, Makemed Husam v. Abdut Karrem.
 - (1921) A I R 1921 Mad 126 (131): 61 Ind Cas 979, Viswanatha Sastriar v. Seetalalishmi Ammal.
 - (1901) 24 Mad 695 (702), Venkataraju v. Chinna Ramayya.
 - (1920) A 1 R 1920 Mad 286 (287): 56 Ind Cas 563, Ganapathiya Pillai v. Gorala Aiyar.
 - (1698) 20 All 302 (304) : 1899 All W N 40, Chunni Lal v. Harnam Das. (1899) 23 Bom 644 (650, 653) : 1 Bom L R 136, Bhaguan v. Ganu.
- (1889) 12 All G1 (G2): 1889 All W N 198 [F B], Kedar Nath v. Lalp Shahai.
 - (1898) 20 All 857 (358) : 1898 All W N 71, Parmeshri Lal v. Mohan Lal.
- (1892) 1892 All W N 5 (5), Ram Kripal v. Sheo Shai. (1919) Al R 1919 Mad 909 (970) : 43 Ind Cas 782, Ramaswami Reddi v.
- Sokkapro Redds. (1906) 16 Mad L Jour 503 (504) . 1 Mad L Tim 291, Appiah v. Lama Feddi. (1916) A I R 1916 Mad 937 (937) : 31 Ind Cas 9, Singararela Pillai v. San
- thanakrishna Mudakar. (1907) 29 All 270 (280, 281) : 1907 All W N 45 : 4 All L Jour 145, Srs Eirs v. Het Ram.
- (1905) 27 All C25 (C29, C29); 2 All L Jour 371; 1905 All W N 190, Baldeo Praiad v. Hn Haudar.

decree for sale or for foreclosure is not capable of execution.18 It is now obligatory on the part of the holder of a preliminary decree to obtain a final decree, before he can proceed to execution. An application for a final decree in a mortgage sust under Order 34 Rule 5 of the Civil Procedure Code, 1908, is now an application in the suit itself and is not one for execution of the preliminary decree.2

- (1921) A I R 1921 Pat 185 (186) . 61 Ind Cas 4. Redar Nath Goenka v. Tarini Prasad Singh.
- (1926) A I R 1926 Mad 816 (817) . 49 Mad 691 : 96 Ind Cas 607, Ellarayan
- v Rangaswams Iver.
- (1917) A I R 1917 Mad 315 (316) , 32 Ind Cas 39, Balaj: Rao v. Harrama (1916) A I R 1916 Cal 541 (542) . 29 Ind Cas 120, Krishna Bar v. Ranamoys
- Debi. (1906) 33 Cal 867 (875, 876) . 4 Cal L Jour 141, Purna Chandra Mandal v.
- Radha Nath Dass.
- (1895) 22 Cal 931 (934), Tara Prasad Roy v. Bhobodeb Roy. (1895) 22 Cal 425 (434), Dwarka Nath Misser v. Barinda Nath Misser.
- (1895) 22 Cal 924 (927), Tiluch Singh v. Parsotein Proshad.
- (1918) A I R 1918 Bom 217 (222) 42 Bom 309 , 46 Ind Cas 107, Narsinga Rao v. Bandu
- (1901) I All L Jour 15 (IT), Udit Narain v. Jagannath.
 - (But see (1902) 24 All 542 (545) 1902 All W N 100, Als Ahmed v. Nasiran Bibi. (But since preliminary decree was not capable of execution, Art. 179 does not apply but Art. 178 applies) (1891) 21 Cal 818 (823), Ajudhia Pershad v. Baldeo Singh,
 - (1902) 26 Mad 780 (784); 13 Mad L. Jont 412, Rungiah Gounden and Co. v. Nanjappa Row. (Do)]
- 1a (1926) A I R 1926 Mad 415 (416) : 93 Ind Cas 99, Bulker Bee v. Md Umar.
- (1914) A I R 1914 P C 150 (152) 42 Cal 776 42 Ind App 88 27 Ind Cas 683 (P C), Munna Lat Parruch v. Sarat Chunder Muherjee
 - (1917) A I R 1917 All 163 (163) 89 All 641 42 Ind Cas 93 (8 B), Gajadhar Singh v Kishen Jiwan Lal
 - (1922) A 1 R 1922 All 883 (383) 44 All 668 75 Ind Cas 485, Stal Singh v. Barmath Prasad (1918) A I R 1918 All 76 (77) 40 All 203 , 43 Ind Cas 870, Negamuddin Shah
 - v. Bohra Bhim Sen. (1917) A I R 1917 All 119 (119) 89 All 532 . 40 Ind Cas 424, Ramp Lat
 - v. Karan Singh. (1915) A I R 1915 All 336 (337) . 38 All 21 : 30 Ind Cas 494, Madho Ram v.
 - Nihal Singh. (1913) 18 Ind Cas 731 (732) , 35 All I78, Badra Narayan v. Kung Behart
 - (1927) A I R 1927 Ecm 32 (35) 50 Born 730 98 Ind Cas 943, Moru Naru-
 - shet Gujar v Gangabas Rama Chandra (1923) A I R 1923 Bom 420(421) 73 Ind Cas 167, Harpwan Deiraj v. Gaja-
 - nan Khashinath. (1983) A I R 1933 Cal 798 (799) . I47 Ind Cas 249, Harthar Prosad Das v.
 - Umesh Chandra Das (1921) A I R 1921 Cal 551 (552) 59 Ind Cas 177, Bhutanath Jana v Tara-
 - chand Jana. (1917) A I R 1917 Cal 175 (175) 37 Ind Cas 602, Sasha Bhusan Das v
 - Pratur Chandra Roy. (1916) A I R 1916 Cal 541 (542) . 29 Ind Cas 120, Krithna Dar v Sm.
 - Ranamoys Debia. (1916) A I R 1916 Cal 231 (233) . 29 Ind Cas 211, Bens Singh v Barhamdeo
 - Singh. (1902) 29 Cal 651 (653), Framatha Chandra Roy v. Kheira Mohan Ghose.
 - (1926) 92 Ind Cas 299 (299) (Lab), Mohan Singh v. Nathumal.

13. Application for final decree in redemption cult. — An application for a final decree in a redemption suit is, as in the case of an application for a final decree in a suit for sale or foredesure, one in the suit itself and not one for the execution of the preliminary decree. But, is an application by the mortgagor praying that he may be allowed to make the payment and for recovery of the mortgaged property, one in execution of the preliminary decree? It was held in the undermentioned case by the High Court of Bombay that the preliminary decree is, so far as the mortgagor himself is concerned, capable of execution, and that his application for recovery of possesion on payment is one for execution of the preliminary decree governed by Article 182 of the Act. In the undermentioned cases arising under the Transfer of Property Act, 1882, a similar view was held. But a contrary view has been expressed in the case noted helow. It was held that the preliminary decree in a suit for

- (1924) A I R 1921 Mad 890 (891): 85 Ind Cas 808, Athamsa Rowther v. Ganesan. (1922) A I R 1922 Mad 65 (66): 60 Ind Cas 866, Venhataiah v. Venhata
- Subbiah. (1918) A I R 1918 Mad 919 (920) : 41 Ind Cas 268, Nummala Mahankali v.
- Kallakuri Subba Ras.
- (1018) A I R 1918 Mad 856 (356): 45 Ind Cas 76, Pattabirama Naidu v. Subramania Chetti.
- (1916) A I R 1916 Mad 523 (528): 39 Mad 486: 29 Ind Cas 142, Lakshmi Ach: v. Subbarama Ayar.
- (1018) A I R 1918 Nag 63 (63): 15 Nag L R 36: 48 Ind Cas 934, Vinayak Rao v. Baijnath Prosad.
- (1917) A I R 1017 Ondh 91 (92): 41 Ind Cas 858: 20 Oudh Cas 205, Jagdish Singh v. Ram Adhin Singh.
- 1914) A I R 1914 Oudh 209 (209) 17 Ondh Cas 847: 25 Ind Cas 752, Vidyasagar v. Ratipal.
- (1910) 8 Ind Cas 986 (987, 988) (Low Bur), Ahmad Ali v. Maung Ton. (1033) A I R 1933 Cai 508 (508): 144 Ind Cas 768, Pulin Chandra Sen v.
- Amin Mea Muza far Ahmad.
- (1919) A I R 1919 Pat 134 (134): 50 Ind Cas 544, Ras Behari Singh v. Juman Lal.
 - (1918) A I R 1918 All 285 (286) : 45 Ind Cas 518 : 40 All 235, Ahmad Khan v. Mt. Gaura.

- (1930) A I R 1930 Mad 353 (353): 125 Ind Cas 95, Venkatarama Reddi v. Doddachariar.
- (1919) A I R 1919 Bom 53 (56): 43 Bom 689: 51 Ind Cas 924, Vasuder V. Gopal. (Application for extension of time is not one for execution but one for possession.)
- (1904) 28 Mad 211 (213), Peoparambil Bara v. Krishna Menon. (Application for extension of time for payment is itself one for execution of the decree.)
 - (1911) 9 Ind Cas 337 (839) : 14 Oudh Cas 10, Jageshar Singh v. Dhagwan Bakhth Singh.
 - (1892) 14 Ali 350 (353) : 1892 Ali W N 40, Bandhu Bhagat v. Muhammad
 - (1891) 16 Bom 490 (185, 486), Narayan Govind v. Anandram Kojiram.
 [But see (1907) 4 Low Bur Rul 83 (95, 86), Maung Ps v. Ma Bar.
 - (Application for possession under S 69, 77. P. Act, is not one for execution nor one in execution...Nor is it under the Civil Procedure Code.)
- 4. (1920) A I R 1920 Upp Bur 43 (41, 45): 54 Ind Cas 507: 3 Upp Bur Rul 183, Maung Tun Maung v. Ma Yuc.

Article 182 Notes 13—14

redemption is provisional and until it is made final, redemption cannot be permitted, that the Court is not absolved from the necessity of passing a final decree, and that there is no provision for the execution of the preliminary decree before it has been made final. It is submitted that this last view is correct.

Where a decree in a redemption suit is not drawn up in the form specified by Order 34 Rule 7, Civil Procedure Code, the decree will not be considered to be a preliminary decree, and time for the execution of such decree will run from the date thereof.⁵

14. Application for ascertainment of mesne profits.— Under the provisions of Section 244 of the Code of Civil Procedure, 1882, any question relating to the secertainment of mesne profits as to which the decree directed an inquiry, was to be determined by the executing Court. ¹³ The said provisions have been omitted in the present Civil Procedure Code, with the result that such inquiry is no longer a proceeding in execution but is one in the sust itself. The award of mesne profits in all cases is to be by a preliminary decree, and when ascertained, they are to be embodied in a final decree. An application for the ascertainment of mesne profits is therefore not an application for execution of a decree.]

(1913) 18 Ind Cas 48 (49): 1913 Pun Re No. 68, Naram Das v. Udham Singh, (Decree not providing any period for payment — Order 34 Rule 7, C. P. C., not complied with.)

(1909) 1 Ind Cas 71 (72) (Cal), Kreshna Chandra Mandal v Jakeral Hag.

- 1a (1925) A I R 1925 P C 117 (117) 88 Ind Cas 482 4 Pat 507: 52 Ind App 188 (P C), Kedar Nath Goenka v. Anant Prasad Singh.
 - (1907) 7 Cal L Jour 301 (302) 12 Cal W N 3, Upendra Chandra Singh v. Sakhi Chand.
 - (1900) 28 Cal 242 (245), Ram Kishore Ghose v. Gops Kant Shaha.
 - (1887) 8 Cal 89 (91) 10 Cal L R 272, Hem Chunder Choudhry v. Brojo Soondary Debee.
 - (1875) 24 Suth W R 339 (340), Wedoy Tara Choudrain v. Syud Abdool Jubbah Choudhury.
 - (1923) A I R 1923 Bom 366 (367) 75 Ind Cas 233 47 Bom 778, Sayad Yusuf Alle v. Sayad Amin.
 - (1914) A I R 1914 Mad 526 [531] S7 Mad 186 18 Ind Cas 586, Ramana Reddy v. Babu Redds.
 - (1891) 19 Cal 132 (189) (F B), Puran Chand v Roy Radha Eishen.
 - (1934) A I R 1934 All 465 (467) 151 Ind Cas 755, Naram Das v. Bhagwali Prasad
 - (1925) A I R 1925 All 588 (590) 47 All 543 87 Ind Cas 822, Rudra Pratap Singh v. Sarada Mahesh Prasad Singh.
 - (1930) A I R 1930 Mad 30 (31) 53 Mad 888 124 Ind Cas 200, Kemgam Sucamy v. Subbamma. (1920) A I R 1939 Fom 217 (218) 116 Ind Cas 700, Lakshmibai Anant v.
 - Racys Bhikays
 - (1911) 11 Ind Cos 939 (940) 39 Cal 220, Midnapore Zamindary Co., Ltd. v. Kumar Naresh Narain Poy.
 - (1936) A I R 1936 Mad 801 (804) 164 Ind Cas 670, Raria Rao v Sree-ramamuriha.

Article 182 Notes 15—16

- 15. Application for personal decree against mortgagor under Order 34 Rule 6 of the Civil Procedure Code.—An application for a personal decree against the mortgagor under Order 34 Rule 6 of the Civil Procedure Code, 1903, is not one for the execution of any decree neainst him.
- 16. Application by auction-purchaser for possession.—An application by a court auction-purchaser of property for possession of the property purchased, is not one for the execution of the decrewithin the meaning of this Article and is not governed by it. This would be so even if the purchaser were the decree-holder himself.⁵
 - (1929) A I R 1929 Pat 368 (368): 8 Pat 482: 117 Ind Cas 647, Kamakhya Narain Singh v. Akloo Singh.
 - (1923) A I R 1923 Bom 268 (269): 77 Ind Cas 497, Thana Zalalji v. Dhana Jawhrya.

(1916) 24 Cal L Jour 23n (28n) (Jour).

- (1924) A I R 1924 Pat 781 (782) : 4 Pat 57 : 84 Ind Cas 272, Harakhran Missir v. Jagdeo Missir.
- (1921) A I R 1921 Bom 404 (404): 61 Ind Cas 448: 45 Bom 819, Gangadhar Manska v. Balakrishna Sorroba.
- (1910) 5 Ind Cas 272 (273) (Cal), Debendra Nath Goswam: v. Khirods Chandra Bandopadhya.

Note 15

- (1936) A I R 1936 Mad 34 (38): 59 Mad 188: 160 Ind Cas 270 (F B), Palantappa Chelliar v. Narayanan Chelliar.
 - (1923) A I R 1923 All 203 (204) : 79 Ind Cas 85, Raj Narain Mal v. Santi
 - Lal. (1928) A I R 1928 All 71 (72) · 50 All 321 : 108 Ind Cas 459, Bisheshar Nath
 - v. Chandu Lal. (1918) A I R 1918 All 105 (106): 40 All 551: 47 Ind Cas 562, Mohamad
 - (1918) A I R 1918 All 105 (106): 40 All 551: 47 Ind Cas 552, 220names Illifat Husain v. Alimunissa. (1906) 28 All 660 (664): 8 All L Jour 445, Gajadhur Lal v. Alliance Bank
 - of Simila, Ltd.
 (1919) 21 Ind Cas 530 (530) (Mad), Rama Venkatasubba Iyer v. Shanmukam
 - 1913) 21 Ind Cas 530 (530) (Mad), Rama Venkalasubba Iyer v. Shanmukar Pillas.
 - (1699) 21 All 453 (454) : 1699 All W N 166, Ram Sarup v. Ghaurani.
 - (1900) 83 Cal 867 (870, 876) · 4 Cal L. Jour 141, Purna Chandra Mandal v. Radha Nath Das.
 - (1892) 14 All 513 (517) . 1892 All W N 60, Musaheb Zaman Khan v. Inayat-ullah.
 - (1925) A I R 1925 Cal 834 (636) . 52 Cal 828 : 89 Ind Cas 1 (F B), Francis Higgins Pell v. Minnie Gregory.
 - (1911) 10 Ind Cas 21 (22) (Oudh), Amer Chand v. Narsingh Narain.

- 1 (1935) A I R 1935 Mad 603 (609) : 59 Mad 693 : 159 Ind Cas 279 (F B), Abdul
- (1909) 1 Ind Cas 993 (993, 999) : 32 Mad 136, Sultan Sahib Markayar v. Chidambaram Chelliar,
- (1909) 1 Ind Cas 416 (419): 31 All 82 (F B), Mt. Dhagwati v. Banvari Lal.
 (1935) A I R 1935 Mad 803 (508): 59 Mad 893: 139 Ind Cas 279 (F B),
 Addul Aus Sahub v. Choklan Chettuar.
 - (1928) A I R 1928 All 368 (370) · 50 All 670 : 115 Ind Cas 869, Mohin Rarakhan v. Haider Bakhih.
 - (1919) A I R 1919 Mad 1001 (1002): 43 Ind Cas 155, Nandur Sultayya v. Venkatramayya Apparaa.
 - (1917) A I R 1917 Mad 979 (979) : 32 Ind Cas 993, Ramaswams Asyar V. Abdul Asia Saib.

Article 182 Notes 17—19

- 17. Application for final decree in partition suit. Order 20 Rule 18, Civil Procedure Code, provides that the Court may, in respect of immovable property not being an estate assessed to the payment of revenue to the Government, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required. After such a preliminary decree has been passed in a partition suit, the proper course for the plaintiff desiring an absolute separation of his share, is to apply for a final decree. Such an application is not one for execution. There is in fact no limitation for such an application being made by the party, it being the duty of the Court to pass the final decree after the necessary enginees.
- 18. Application for restitution. See Note 7 to Article 181, ante, and the undermentioned cases.
- 19. "Givil Court."—This Article will apply only where the decree or order sought to be executed is that of a Civil Court. Is a Revenue Court a Civil Court within the meaning of this Article?
 - (1924) A I R 1924 Bom 429 (431) · 48 Bom 550 . 63 Ind Cas 932 (F B), Hargound Fulchand v. Dhudar Raoji
 - (1988) A I R 1933 Mad 745 (746); 145 Ind Cas 397, Apparoc. Namar v. Lakshmans Redds.
 - (1927) A I R 1927 Nag 294 (295) . 103 Ind Cas 335, Balajs Eashsnath v. Anandrao,
 - (1902) 28 Mad 740 (741): 13 Msd L Jour 237, Kattayat Pathumay v. Raman Menon.

Note 17

- (1929) A I R 1923 Oudh 456 (457) 5 Luck 280 121 1nd Can 287, Lalta Prasad v. Brahma Din
- 2 (1933) A I R 1933 Pesh 101 (104) 146 Ind Cas 201, Fagirehand v. Mohammad Abbarkhan.
 - (1929) A I R 1929 Oudh 117 (120) 112 Ind Cas 205, Bisheshwar Gir Goshain v Saiish Chandra Chattersee.
 - (1998) 20 All 311 (314) . 1898 All W N 45, Shah Muhammad Ehan v. Hanu ant Singh.
 - (1907) 1907 Pun L R No. 86 . 1906 Pun Re No. 47, Durga Das v. Fahir Chand.
 - (1930) A 1 R 1930 Mad 528 (533) 53 Mad 378 131 Ind Cas 150, Ramanathan Chetty v. Alagappa Chetty
 - (1918) A 1 R 1918 Mad 751 (755) 40 Ind Cas 820, Sethurama Sahib v. Chotta Raja Sahib.
 - (1916) A I B 1916 Mad 800 (810) SO Ind Cas 380, Srinitaza Mudali v. Ramaswamy Mudali
 - (1907) 17 Mad L Jour 20 (20) (N R C)
 - (1921) A I R 1921 Pat 296 (297) 59 Ind Cas 872, Erishna Lal Jha v Mandesu ar Jha
 - (1904) 2 Mad L Tim 205 (266), Ramaswamy Nawker v Ramaswamy Kamaya Natcher.
- (1993) A 1 R 1993 Pesh 101 (104), 146 Ind Cas 201, Faqirchand v. Mohammad Akbar Khan. (A 1 R 1920 Oudh 231 (232), Followed.)

- 1 (1939) A 1 R 1939 Lah 73 (76) I L R 1938 Lah 571, Punjab National Bank, Ltd., Delhi v Firm Nanhe Mal Jankidas.
 - (1923) A 1 R 1923 Nag 101 (101): 18 Nag L R 200 76 Ind Cas 255, Sonba v. Parasharam.

Article 182 Notes 15—16

- 15. Application for personal decree against mortgagor under Order 34 Rule 6 of the Civil Procedure Code.—An application for a personal decree against the mortgagor under Order 34 Rule 6 of the Civil Procedure Code, 1908, is not one for the execution of any decree against him.
- 16. Application by auction-purchaser for possession.—An application by a court auction-purchaser of property for possession of the property purchased, is not one for the execution of the decrewithin the meaning of this Article and is not governed by it. This would be so even if the purchaser were the decree-holder himself.
 - (1929) A I R 1929 Pat 368 (368): 8 Pat 482: 117 Ind Cas 647, Kamalhya Naram Singh v. Akloo Singh.
 - (1923) A I R 1923 Bom 268 (209); 77 Ind Cas 497, Thana Zalalji v. Dhana Jawhrya.
 - (1916) 24 Cal L Jour 23n (28n) (Jour).
 - (1924) A I R 1924 Pat 781 (782) : 4 Pat 57 : 84 Ind Cas 272, Harakhpan Missir v. Jagdeo Missir.
- . (1921) A I R 1921 Bom 404 (404): 61 Ind Cas 448: 45 Bom 819, Ganzadhar Mantha v. Balakreshna Sotroba.
 - (1910) 5 Ind Cas 272 (273) (Cal), Debendra Nath Goswams v. Khirods Chandra Bandopadhya.

Note 15

- (1936) A I R 1936 Mad 34 (38): 59 Mad 188: 160 Ind Cas 270 (F B), Palantappa Chettiar v. Narayanan Chettiar.
 - (1923) A I R 1923 AH 203 (204): 79 Ind Cas 85, Raj Naram Mal v. Santi Lal.
 - (1928) A I R 1928 All 71 (72): 50 All 321: 108 Ind Cas 459, Bisheshar Nath v. Chandu Lal.
 - (1918) A I R 1918 All 105 (106): 40 All 551: 47 Ind Cas 562, Mohamad
 - Iltifat Husain v. Alimunnissa. (1906) 28 All GCO (664): 3 All L Jour 415, Gajadhur Lal v. Alliance Dank
 - of Simla, Ltd. (1913) 21 Ind Cas 530 (530) (Mad), Rama Venkatasubba Iyer v. Shanmulam
 - Pillas. (1899) 21 All 453 (454) : 1899 All W N 106. Ram Sarup v. Chaurani.
 - (1906) S3 Cal 867 (870, 876) : 4 Cal L Jour 141, Purna Chandra Mandal v. Radha Nath Das.
 - (1892) 14 All 513 (517): 1892 All W N 80, Musaheb Zaman Khan v. Inayat-ullah. - 828: 89 Ind Cas 1 (F B), Francis
 - Chand v. Narsingh Narain.

Shand v. Narsingh Narain

Note 16

٠.

- 1 (1935) A 1 R 1935 Mad 803 (808) : 58 Mad 893 : 159 Ind Cas 279 (FB), Abdul Arıs Sahib v. Chollan Chettiar.
- (1909) 1 Ind Cas 993 (999, 999) : 32 Mad 136, Sultan Sahib Marlayar v. Chidambaram Chettaar.
- (1909) 1 Ind Cas 416 (419): 31 All 82 (F B), Mt. Dhagrati v. Lanuari Lel.
 (1935) A I R 1935 Mad 603 (608): 59 Mad 893: 159 Ind Cas 279 (F B),
 Addal Litts Eathb v. Chold lan Chittar.
 - (1928) A I R 1929 All SCS (370) : 50 All C70 : 115 Ind Cas SC9, Mohin Rasalhan v Hauder Balhih.
 - (1919) A I R 1919 Mad 1001 (1002): 43 Ind Cas 155, Nandur Subbayya v. Venhairamayya Apparao.
 - (1917) A I R 1917 Mad 979 (979) : 82 Ind Cas 993, Ramaswami Asyar v. Abdul Arts Saib.

47. Application for final decree in partition suit. — Order 20 Rule 18, Civil Procedure Code, provides that the Court may, in respect of immovable property not being an estate assessed to the payment of revenue to the Government, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required. After such a preliminary decree has been passed in a partition suit, the proper course for the plaintiff desiring an absolute separation of his share, is to apply for a final decree. Such an application is not one for execution. There is in fact no limitation for such an application, inasmuch as the Rule does not contemplate any such application being made by the party, it heing the duty of the Court to pass the final decree after the necessary commiss.

- Application for restitution. See Note 7 to Article 181, ante, and the undermentioned cases.¹
- 19. "Civil Court."—This Article will apply only where the decree or order sought to be executed is that of a Civil Court. Is a Revenue Court a Civil Court within the meaning of this Article?
 - (1921) A I R 1924 Bom 429 (431) · 48 Bom 550 . 83 Ind Cas 932 (F B), Hargound Fulchand v. Bhudar Rasja.
 - (1933) A I R 1933 Mad 745 (746) . 145 Ind Cas 397, Appaico-Namar v. Lalshmana Reddi.
 - (1927) A I R 1927 Nag 204 (295) . 103 Ind Cas 335, Balaja Kashmath v. Anandrao.
 - (1902) 26 Mad 740 (741) · 13 Mad L Jour 237, Kattayat Pathumay v. Raman Menon.

Note 17

- (1929) AIR 1929 Oudh 450 (457)
 Luck 280
 121 Ind Cas 287, Lalta Prasad v Brahma Dun
 (1933) AIR 1933 Fesh 101 (101)
 146 Ind Cas 201, Facurchand v. Moham
 - mad Akbarkhan
 - (1929) A I R 1929 Oudh 117 (120) 112 Ind Cas 205, Bisheshn ar Gir Goshain v. Satish Chandra Chatterjee.
 - (1898) 20 All 311 (314) 1898 All W N 45, Shah Muhammad Khan v. Hanuant Singh
- (1907) 1907 Pun L R No. 86 1906 Pun Re No. 47, Durga Das v. Fahir Chand.
- (1930) A I R 1930 Mad 528 (533) 53 Mad 378 131 Iad Cas 160, Ramanathan Chetty v. Alagappa Chetty. (1918) A I R 1918 Mad 751 (755) 40 Iad Cas 620, Sethurama Sahib v.
- Chotta Raja Sahib.
 (1916) A 1 R 1916 Mad 809 (810) 30 Ind Cas 380, Sriniasa Mudali v.
- (1907) I R 1916 Mad 809 (810) 50 Ind Cas 380, Srinitasa Mudali -Ramaswany Mudali (1907) IT Mad L Jour 20 (20) (N R C)
 - (1901) 11 Mad L Jour 20 (20) (R & C) (1921) A 1 R 1921 Pat 296 (297) 59 Ind Cas 672, Krishna Lal Jha v Man-
- (1921) A 1 R 1921 1 at 290 (291) 39 Ind tas 612, A fishna Lai Jha V Man deswar Jha
- (1904) 2 Mad L Tim 265 (266), Ramaswamy Naucher v Pamaswamy Kamaya Naucher
- (1933) A I R 1933 Pesh 101 (104), 146 Ind Cas 201, Fagurchand v Mohammad Albar Khan (A I R 1920 Oudh 231 (232), Followed)

Note 18

- 1 (1939) A I R 1939 Lah 78 (76) I L R 1938 Lah 571, Punjab National Bank, Ltd., Delhi v Firm Nanhe Mal Jankidas.
 - (1923) A I R 1923 Nag 101 (101) 18 Nag L R 200 76 Ind Cas 255, Sonba v. Parasharam.

Article 182 Notes 17—19 Article 182 Notes 19-21

Article.

Though there is a certain distinction between the terms "Civil Courts" and "Revenue Courts" in that the former means Courts exercising all the powers of a Civil Court, as distinguished from Revenue or Rent Courts which only exercise powers over suits of a limited class, the latter are also Civil Courts in the sense that they decide civil questions hetween persons seeking their civil rights.1 It is therefore conceived that an application for the execution of a decree of a Revenue Court will be governed by this Article, provided that the special or local law, if any, governing the case, does not prescribe any period of limitation for such an application. For, if such special or local law does prescribe a period of limitation different from that

regard to Section 29, ante, and not the period prescribed by this 20. "Decree." - A "decree" is defined as follows by Section 2 sub-section 2 of the Code of Civil Procedure :

prescribed in this Article, it is that period that will apply, having

"'Decree' means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within Section 47 or Section 144 hut aball not include -

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (h) any order for dismissal for default.

Explanation .- A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may he partly preliminary and partly final."

21. "Order."-The word "order" has been defined by Section 3 sub-section 14 of the Code of Civil Procedure as meaning "the

- 1. (1582) 9 Cal 295 (300, 801) : 12 Cal L R 311 : 9 Ind App 174 : 4 Sar 892 : 6 Ind Jur 547 : 5 Shome L R 130 (PC), Nilmon: Singh Deo v. Taranath Mulerjee.
 - (1910) 7 Ind Cas 787 (788) : 33 Cal 288 (292), Protap Udai Narain 7. Madan Mohan Nath.
 - (1902) 26 Mad 518 (520) : 13 Mad L Jour 206, Veerasamy v. Manager, Pettapur Estate.
 - (1883) 5 AU 406 (411) . 1883 All W N 92 (F B). Madho Prakash Singh T. Murls Manchar. (1900) 1 Ind Cas 933 (934) : 36 Cal 252 (254), Ram Lochan Singh v. Deni
 - Prasad Kumrs.

Article 182 Notes 21—23

formal expression of any decision of a Givil Court which is not a decree." The word occurs both in the first and the third columns of this Article. In the first column of the Article it obviously refers to orders capable of execution, for otherwise an application for execution cannot lie at all. The "order" referred to in the second clause of the third column need not be one expable of execution. See Note 40 infra. As to the meaning of the word "order" occurring in clause 5 of the third column, there is a conflict of opinion for which see Note 129 infra.

22. "Not provided for by article 183."—See Note 2 to Article 183 in fra.

23. "Not provided for by section 48 of the Gode of Civil Procedure, 1908." — The words "provided for" in column 1 of this Article do not apply so clearly to Section 48, Civil Procedure Code, es they apply to Article 183, because Section 48, Civil Procedure Code, does not deal with decrees of Courts to which this Article does not apply. As Section 48, Civil Procedure Code, only prescribes a maximum limit of time for execution and does not prescribe the period within which each application for execution is to be made. The words mentioned above must therefore be construed to mean that where execution is barred by Section 48, Civil Procedure Code, oxecution cannot be allowed under this Article. That is to say, if the question of absolute har under Section 48, Civil Procedure Code, does not erise, then the ordinary limitation prescribed under this Article is copilicable."

See also Note 3 to Article 181 ante.

Note 23

 [13.(1932) A I R 1932 All 351 (332) 54 All 622 138 Ind Cas 93, Fagar Chand v. Kundan Singh.
 [See also [1922] A I R 1922 Mad 268 (270) 45 Mad 785 70 Ind Cas

[See also [1922] A I K 1922 And 209 [240] 45 Mad 785 70 Ind Cas 296, Subbarayan v. Nafarajan] 1, (1924) A I R 1924 All 263 [265] . 46 All 73 . 79 Ind Cas 603, Surajman

Chaube v Anjore Shukal. (1938) A I R 1938 Pat 401 (402) · 175 Ind Cas 558, Ram Ranbijaya Prasad Sindh v Kesho Prasad Singh.

(1932) A I R 1932 Oudh 220 (221) 138 Ind Cas 149, Jag Mohan Tewars v.

Mahadeo Prasad.

(1889) 1889 Pun Re No. 109, Bekars Lal v Baness.

(1891) 1891 Pun Re No 9, Gholam Jelane v. Ganga Ram

- (1918) A I R 1918 All 216 (218) 40 All 198 . 44 Ind Cas 21, Jurawan v. Mahabir Dube.
- (1932) A I R 1932 All 351 (352) 54 All 622 138 Ind Cas 93, Faqir Chand v. Kundan Singh.
- 3. (1879) 1879 Bom P J 573, Mayaram v. Lalbhas.
 - (1879) 1879 Bom P J 574, Laldas v. Bhaguany.
 - (1915) A I R 1915 Bom 40 (41) 39 Bom 256 28 Ind Cas 478, Ealaram Vithalchand v. Maruti Devji (Fresh period obtainable under Article 182 are controlled by S 48 of the Civil Procedure Code)

[See also (1914) A I R 1914 Mad 526 (527) 87 Mad 186 18 Ind Cas 586, Ramana Reddi v Babu Reddi 1

[See (1891) 1894 Pun Re No 128, Jhanda v. Mehan Lal.]

Article 182 Notee 19—21

Though there is a certain distinction between the terms "Civil Courts" and "Revenne Courta" in that the former means Courts exercising all the powers of a Civil Court, as distinguished from Revenne or Rent Courta which only exercise powers over suits of a limited class, the latter are also Civil Courts in the sense that they decide civil questions hetween persons seeking their civil rights. It is therefore conceived that an application for the execution of a decree of a Revenue Court will be governed by this Article, provided that the apecial or local law, if any, governing the case, does not prescribe any period of limitation for such an application. For, if such special or local law does prescribe a period of limitation different from that prescribed in this Article, it is that period that will apply, having regard to Section 29, ante, and not the period prescribed by this Article.

20. "Decree." — A "decree" is defined as follows by Section 2 aub. section 2 of the Code of Civil Procedure:

"Decree' means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may he either preliminary or final. It shall he deemed to include the rejection of a plaint and the determination of any question within Section 47 or Section 144 but shall not include —

- (a) any adjudication from which an appeal lies as an appeal from an order, or
- (b) any order for dismissal for default,

Cap S .upan

Explanation.—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final."

21. "Order."—The word "order" has been defined by Section 2 sub-section 14 of the Code of Civil Procedure as meaning "the

- (1982) 9 Cal 295 (300, 301): 12 Cal L R 311: 9 Ind App 174: 4 Sat 392: 6
 Ind Jur 547: 6 Shome L R 139 (P C), Nilmoni Singh Deov. Taranath Mukerjee.
 - (1910) 7 Ind Cas 787 (788) : 38 Cal 288 (292), Protap Udas Narain v.
 - Madan Mohan Nath. (1902) 26 Mad 518 (520) : 18 Mad L Jour 295, Veerasamy v. Manager, Pritamur Estate.
 - (1883) 5 All 406 (411): 1893 All W N 92 (F B), Madho Pralash Singh v. Muris Manohar,
 - (1909) 1 Ind Cas 933 (934) ; 36 Cal 252 (254), Ram Lochan Singh v. Beni Prasid Kumrs.

 - v. Bhup Singh. (1908] 31 Mad 24 (26, 29) : 17 Mad L Jour 441 : 3 Mad L Tim 19, Sambasra Mudalsar v. Panchanada Pillas.)

formal expression of any decision of a Civil Court which is not a decree." The word occurs both in the first and the third columns of this Article. In the first column of the Article it obviously refers to orders capable of execution, for otherwise an application for execution cannot lie at all. 'The "order" referred to in the second clause of the third column need not be one capable of execution. See Note 40 infra. As to the meaning of the word "order" occurring in clause 5 of the third column, there is a conflict of apmion for which see Note 129 infra.

22. "Not provided for by article 183."-See Note 2 to Article 183 infra.

23, "Not provided for by section 48 of the Cede of Civil Procedure, 1908." - The words "provided for" in column 1 of this Article do not apply so clearly to Section 48, Civil Procedure Code, as they apply to Article 183, because Section 48, Civil Procedure Code, does not deal with decrees of Courts to which this Article does not apply. 12 Section 48, Civil Procedure Code, only prescribes a maximum limit of time for execution and does not prescribe the period within which each application for execution is to be made.1 The words mentioned above must therefore be construed to mean that where execution is harred by Section 48, Civil Procedure Code. execution cannot be allowed under this Article.2 That is to say, if the question of absolute bar under Section 48, Civil Procedure Code. does not arise, then the ordinary limitation prescribed under this Article is applicable.3

See also Note 3 to Article 181 ante.

Note 23

1a (1932) A I R 1932 All 351 (352) 54 All 622 . 138 Ind Cas 93, Faoir Chand v Kundan Singh [See also (1922) A I R 1922 Mad 268 (270) 45 Mad 785 70 Ind Cas

396, Subbarayan v. Natarajan]

- 1. (1924) A I R 1924 All 263 (265) . 46 All 73 : 79 Ind Cas CO5, Surasman Chaube v. Anjore Shukal.
 - (1938) A I R 1938 Pat 401 (103) 175 Ind Cas 559, Ram Ranbijaya Prasad Singh v. Kesho Prasad Singh.
 - (1932) A I R 1932 Oudh 220 (221) 138 Ind Cas 149, Jan Mohan Tewart v. Mahadeo Prasad.
 - (1889) 1889 Pun Re No. 109, Behars Lal v. Baness.
 - (1891) 1891 Pun Re No 9, Gholam Jilani v. Ganga Ram.
 - (1918) A I R 1918 All 216 (218) 40 All 198 . 44 Ind Cas 24, Jurawan v. Mahabir Dube
- 2. (1932) A I R 1932 All 351 (352) . 54 All 622 133 Ind Cas 93. Fager Chand v. Kundan Singh
- 3. (1879) 1879 Bom P J 578, Mayaram v. Lalbhas
 - (1879) 1879 Bom P J 574, Laldas v. Bhagwangs,
 - (1915) A I R 1915 Bom 40 (41) 39 Bom 256 23 Ind Cas 478, Balaram Fishalchand v. Maruts Det p. (Fresh periods obtainable under Arti-cle 182 are controlled by S. 48 of the Civil Procedure Code.)
 - (See also (1914) A I R 1914 Mad 526 (527) 37 Mad 196 19 Ind Cas 586, Ramana Redds v Babu Redds] [See (1894) 1894 Pun Re No 128, Jhanda v. Mehan Lal]

Article 182 (Clause 1) Notes 24-25 24. Registered decree. — Where n certified copy of a decree or nrder has been registered, column 2 nf this Articlo provides for a period of six years for an application for execution of the decree. The word "registered" in that column means registered under the Indian Registration Act, 16 nf 1908.

In order therefore that the decree-holder may have the six years' period under this Article, the registration must have been made in accordance with the provisions of the Judian Registration Act. Thus, where a copy of n decree is registered on being presented by an unauthorised person, the registration is invalid and the decree-holder cannot avail himself of the longer period given by this Article.

Section 23 of the Indian Registration Act provides that a copy of n decroe may be presented for registration within four months from the date on which the decroe was made. In computing this period of four months, "the date on which the decree was made" should be taken to be the date on which the decree was signed and not the date on which the outgreent was pronounced."

CLAUSE 1.

25. Data of decrea. — Order 20 Rule 7 of the Code of Civil Procedure provides as follows:

"The decree shall bear dato the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree."

The words "date of the decree" in clause I of the third column of this Article, must therefore mean the date on which the judgment was pronounced and not the date on which the decree is actually drawn up and signed. An application for execution of a decree must

Note 24

1. (1937) 41 Cal W N 945 (916), Abdur Rahim v. Chhamiruddin.

[See (1875) 24 Suth W R 372 (372], Haghoo Nandun Singh v, Cochrane. (This Article will not apply to a decree of which only a mentorandum was registered under Act 20 of 1866 which did not contain a provision for registration of a copy of a decree or order.)

(1883) 1883 Pom P J 168, Bhagwant v. Janki Bai. (Do))

(1937) 41 Cal W N 915 (916), Abdur Rahim v. Chhamiruddin.
 (1903) 6 Oudh Cas 9 (14, 15), Atal Bihari Lal v. Hiscanchal Singh.

4. (1937) 41 Cal W N 915 [916], Abdur Rahim v. Chhamiruddin.

Note 25

1. See the cases cited in Foot-Notes (2) and (3), infra. [See also (1937) 41 Cal W N 915 (916), Abdur Rahim v. Chhami-

ruddin. (1921] A I R 1921 Cal 1061 (1065) : 82 Ind Cas 746, Giribala Dasi v.

Distrambar Haldar. (1920) A 1 R 1920 Cal 614 (611): 59 Iod Cas 51, Nookoor Chandra Mullick v. Rajans Kanta Ghoss.

(1921) St Cal L Jour 491 (497), Ram Kanas Pai v. Punna Chandra. (1916) A I R 1916 Cal 511 (512) : 82 Ind Cas 744, Anandram v. Kityananda Barham. be made within three years of the "date of the decree" as explained above, if the case is governed by clause 1 of this Atticle. It is not open to the parties in such cases to extend, by their agreement, the period of limitation with regard to its execution. Consequently, where a decree, the execution of which is governed by clause 1 of this Article, is adjusted between the parties and it is agreed that it should be executable as adjusted, an application for execution of the decree will be time-baired if made beyond three years of the date of the decree.

Where, however, by the mistake of the Court, a decree bears a date different from the date of the judgment, and being misled thereby the decree holder applies for execution within three years of the date as found in the decree, the execution application will be regarded as being in time on the principle of the maxim actus curva meminem gravabit—an act of the Court shall prejudice no man.³

"The date of the decree" has reference to the decree sought to be executed. Where there is a preliminary and a final decree in the case.

- (1909) 3 Ind Cas 391 (392) (Cil), Choto Rakhal Das Masumdar v. Jojendra Naram Masumdar.
- (1906) 3 Cal L Jout 291 (292), Madan Mohan Das v. Nobiu Kishore
- (1890) 1 Cal W N 93 (94), Afzal Hossein v. Mt. Umda Bibi.
- (1897) 25 Cal 103 (110, 111), Golam Gaffar Mandal v Golyan Bibs.
- (1889) 17 Cal 317 (357) 16 Ind App 195. 13 Ind Jur 449 5 Sar 463 (P C), Munguiram Maruari v. Gursahai Naud
- (1923) A I R 1923 Pat 129 (130). 1 Pat 771.75 Ind Cas 879, Sagarmal Marwari v Lachinisaran.
- (1915) A I R 1915 Mad 303 (308) 25 Ind Cas 67, Narayanaswamy Thesan v. Krishnasami Pillas
- (1920) AIR 1920 Pat 111 (111) 57 Ind Cas 531 5 Pat L Jour 490, Hira Lal Sahu v Jamuna Prasad Singh
- (1916) A I R 1916 Pat 235 (236) 34 Ind Cas 501 1 Pat L Jour 359, Surajdeo Naram Singh v Musahnao Paut (1836) 1888 Bom P J 162, Madhairat v. Vithu]
- 2. (1915) A I R 1915 All 291 (232) 23 Ind Cas 391, Ibrahimji v Hasanuddin Khan
 - (1883) 6 All 623 (625) 1884 All W N 207, Ramlakkan Ras v Bakhtaur Ras.
 - (1881) 1881 All W N 118 (118), Jena Ram v Husam Als.
 - (1935) 164 Ind Cas 416 (417) (Cal), Sarada Prasad Ghose v Poleya Khatun Bibi (1874) 23 Suth W R 129 (130), Ram Runjam Chuckerbutty v Rajah
 - (1874) 23 Suth W R 129 (130), Kam Runjam Chuckerbutty v Raj Jowhurujumah Khan
 - (1872) 17 Suth W R 396 (398), Bibre Meheroonissa v Banee Roushum Jehan (1870) 18 Suth W R 44 (48) 4 Beng L R 101 (F B), Kristo Konul Singh v Huree Strate
 - (1870) 13 Suth W R 164 (166), Medhoomootty Debia v Dhunput Singh
 - (1882) 1882 Pun Re No. 190, Bassna Mal v Sirdar Amar Singh (1876) 1876 Pun Re No. 46, Duarha Das v Bam Sarn
 - (1880) 1880 Pun Re No 48, Surdar Amer Singh v Jonahur Singh
 - (1905) 1905 Pun L R No. 27, Namon Ram v Muhammad Nawar Khan.
 (1930) A I R 1930 Prit 615 (618) 10 Pat 173 123 Ind Ca. 786, Ganga Bishun Maruara V Raghunath Prasad
- 3 (1933) A I R 1938 Cal 239 (240) 141 Ind Ca- 114 Nation Kartz Easy v. Kamaraddi
 - (1938) A I R 1938 Pat 149 (150) 174 Ind Ct. 297, Kale Prasad v. Bibi Ares Falma.

Article 152 (Clause 1) Note 25 and the decree sought to be executed is the final decree, the preliminary decree being incapable of execution, time will run from the date of the final and not from the date of the preliminary decree.

X obtained n decree against A, B and C, the decree so far as C was concerned being ex parte. O applied thereafter to set aside the ex parts decree against him, and on rehearing the suit, the Court restricted itself to the case of C. Ultimately a decree was passed against all the defendants. Within three years thereafter but after three years from the date of the original decree, the decree-helder applied for execution. A and B contended that as against them the application was barred by limitation. It was held by the High Court of Allahahad that when the decree was set aside at the instance of C. it must be deemed to have been set aside in its entirety (it being one and indivisible), that the subsequent decree passed was one against all the defendants, and that the application for execution being within three years of the date of that decree was not barred.5 The same view was expressed by the High Court of Madras also.6 A very aimilar case came before the Privy Council in Ashfaq Hussain v. Gauri Sahai. In that case X obtained a decree egainst B, C and D on the 25th Angust 1900. D subsequently applied to set aside the decree which had been passed ex parts against him. It was set aside against him but subsequently a decree was passed against him also on 16th November 1904. The decree was made checlute on 17th November 1905. The decrec-holder applied on 21st December 1905 for execution of both the decrees. It was held by their Lordships of the Privy Council that the second decree must be taken to have supplemented and completed the first decree and it was from the dote that it was made absolute that the statute began to run. It was

^{4. (1921)} A I R 1921 Cal 699 (703): 70 Ind Cas C, Sashikanta Acharya V. Sarat Chandra Ras Chaudhari.

⁽¹⁹²⁴⁾ A I R 1924 Cal 191 (192): 50 Cal 743: 74 Ind Cas 1017, Hayalunnessa Chowdhurans v. Achia Khalun,

⁽¹⁹²⁷⁾ A IR 1927 Born 191 (183): 61 Born 125: 100 Ind Ca. 9.55, 65hopen Lot Sahar Lai v. Japaram Borna, (Wirro there was a preliminary Lai Sahar Lai v. Japaram Borna, (Wirro there was a preliminary Lai Sahar Lai v. Japaram Borna, (Wirro there was a preliminary Lai Sahar Lai V. Japaram Bornal Indi decree dawn up; Hidd, that an omission to draw up a formal decree may be condoned where the terms of the decree sought to be executed an otherwise ascertained eclerity secretainable and Section 93, C. P. Cole, would corer such an error or irregularity if it does not affect the metits of the case of juit-

diction of the Court.)
(1897) 19 All 520 (520, 521) : 1897 All W N 137, Mahabir Prasid v. Sital

Singh.

^{(1896) 1896} All W N 100 (100), Mulchand v. Muktapal Singh. (1912) 15 Ind Cas 732 (733) (Mad), Yemani Chinna Seshayya v. Varanari Penawa.

^{(1912) 17} Ind Cas 759 (759) (Mad), Venkata Perumal Raju v. Audikesavalu Reddi.

^{(1913) 18} Ind Cas 10 (10) (Mad), Ramasami Iyengar v. Chinna Thambi.

^{(1916) 18} Bom L R 41 (43) (Jour).
5. (1910) 5 Ind Cas 284 (285) (All), Samoth Dhar Dute v. Bhuladhar Dute.

^{6. (1919) 37} Mad L. Jour 2 (2, 3, 4) (NIC) (Critical Note on 46 Ctl 25: A I R 1919 Caf 253: 50 Ind Cas 15, Umeth Chandra v. Akrur Chandra.)

^{7. (1911) 9} Ind Cas 975 (977) : 29 Ind App 37 : 33 All 261 (I' C)

then that the plaintiff was justified in applying for the joint execution of the decree to which he was entitled. In the undermentioned case, A chained a decree for money against B, C and D. On the application of D for setting saids the decree, the Court ordered that the suit as against D should be dismissed, but should be decreed ex parts against A and B. It was held by the High Court of Calcutta, distinguishing the Privy Council case referred to above, that the order so far as it purported to be against A and B was a nullity, that the only decree enforceable against them was the original decree and that time under this Article ran from that date.

26. Clause 1 not applicable where decree is not immediately capable of execution. - Where a decree is immediately capable of execution, an application for the execution thereof is clearly governed by clause 1 of this Article. The clause will not, however, apply where the decree in respect of which the application for execution is made, is not, on the date of its passing, immediately capable of execution. In the case of such a decree, time cannot, as has been seen in Note 11 ante, run against the decree-holder until the decree hecomes capable of execution 1 It is a fundemental priociple of law that, for the purpose of any particular application, time will run only from the moment of which the applicant first becomes estitled to make it.2 Sioce "the date of the decree" can, as seen in Note 25 ante, mean only the date of the judgment, clause 1, which makes time run from the date of the decree, cannot be emplied to emplications for the execution of decrees which ere not capable of execution on the date on which they are passed, but which subsequently become canable of execution. It has accordingly been held in numerous cases that each applications (where they do not also fall under any other clause of this Article), would be governed by the general Article 181.3 Thus, where a decree was for possession of immovable property,

8. (1919) A I R 1919 Cal 253 (254) . 46 Cal 25 : 50 Ind Cos 15, Umesh Chandra
Roy v. Abrur Chandra Siddar.

••	Note 26	
		 101
•	•	₹.
		-
	••	 nia

(1984) 6 Mad 137 (139), Krishnan v. Nılalandan.

(1906) 29 Mad 46 (47), Rafrachalam Ayyar v. Venkatarama Ayyar. 2. (1928) A I R 1928 Cal 646 (648) : 56 Cal 61 : 117 Ind Cas 543 (S B), Hari-Mohan Dalal v. Paramehar Shou.

S.

Gound.

(1885) 8 All 56 (57): 1885 All W N 827, Thalur Das v. Shaddal. (1924) A I R 1924 All 263 (264): 46 All 78: 79 Ind Cas 605, Surajman Chaube v. Anjoure Shuhal. Article 182 (Clause 1) Note 26 on default by the judgment-debtor in the payment of a certain annitivy year by year, it was held that an application for the execution of the decree after default was one governed by Article 178 of the Act of 1877, corresponding to Article 181 of the present Act. St. It has been held, however, in the undermentioned cases, that the words "date in the decree" in clause I mean the date of the effectiveness of the decree, and that clause I will apply even where the decree becomes capable of execution unly on a future date. It is submitted that this view is not correct.

Whether a decree is, or is not, capable of immediate execution depends upon the construction of the decree and also upon other circumstances of the case. It is not necessary that the non-executability of the decree must be inherent in the decree itself in order to avoid the operation of clause 1. Where execution could not be successfully taken against the property specified in the decree by reason of causes for which the decree bolder is not responsible, it was held by the High Court of Madras that an application for execution against the property specified, after such property became

- (1897) 1897 Pun Re No. 65 (F B), Hanwanta v. Bhagirath. (Overruling 1892 Pun Re No. 126.)
- (1914) A I R 1914 Cal 36 (37): 21 Ind Cas 615, Mahamaya Prasad Singh v. Abdul Hamid.
- (1920) A I R 1920 Upp Bur 21 (23) . 60 Ind Cas 23 : 6 Upp Bur Rul 261, Yinke Supaya v. Maung Kin.
- [See also (1895) 1895 Bom P J 129, Manchha Kasan v. Amtha Hwa] 3a.(1894) 10 Ali 297 (239) : 1894 Ali W N 61, Muhammad Islam v. Muhammad Ahsan.
- 4. (1927) A I R 1927 Oudh 488 (489): 105 Ind Cas 545, Mt. Fatima Begam v. Ravist Khan.
 - (1874) 1874 Bom P J 165, Murhars v. Sadashiv. (Case under the Act of 1871.)
- In the following cases the decree was held capable of immediate execution: (1925) A I R 1925 Mad 1063 (1083, 1084): 87 Ind Cas 557, Chandukutty Nayar v Narayana Nayar.
 - (1900) 2 Bom L R 199 (200), Shidlingappa v. Durdundeppa.
 - (1885) 2005 in W N 102 6:001 Tate Present Chan Cales 14 decree was
 - (1925) A I R 1925 Mad 1276 (1276) : 90 Ind Cas 789, Muthu Alagappa

In the following cases the decree was held not capable of execution:

^{(1894) 1894} Born P J 259, Salharam v. Bapuji. (Declaratory decree not capable of execution.)

⁽¹⁹³⁰⁾ A Î R 1930 Lah 110 (111) : 120 Ind Cas 597, Banu Mal v. Paras Ram. (Do.)

 ^{(1893) 16} All 179 (181). 1894 All W N 17, Ram Dial v, Indar Kuar. (Do.)
 (1999) A I R 1999 Nag 34 (95): 115 Ind Cas 161, Mt. Dhannaba: Johri v. Keshuchand Johri.

Mr. Justice Wallace observed as follows :

Article 182 (Clause 1) Notes 26-27

"It had been held in several cases that the immediate nonexecutability of a decree must be inherent in the decree itself. that is, that the mere reading of the decree would show that it was unexecutable at once But the decree in Rameshwar Sanoh v. Homeshwar Singh? did not, on the face of it, imply any such non-executability since, for all that the Court passing the decree knew, the judgment-debtor might be already in possession of Janeshwar's property and therefore the decree would be enforceable as soon as passed. The general principle laid down by the Privy Council is, that in order to make a provision of the Limitation Act, namely, Article 182 apply, the decree sought to he enforced must have been in such a form as to render it capable 'in the circumstances' of being enforced. I would stress the words 'in the circumstances' as implying that the Court is to be guided by the circumstances of the case in deciding whether the decree could not have been enforced at once, that is, whether any right to execute it had, or had not, accrued. Part of the circumstances which their Lordships considered relevant in that case was whether or not the decreeholder was responsible for the delay which had taken place in

27. Combined decree against person and property, when capable of execution.— Where a combined decree was passed under the old Code of Civil Procedure against the person and the proporty of the mortgager, it was held that time would, even in respect of the former relied, nun from the date of the decree under clause 1 of this Article ¹ Where a mortgage decree directed that the mortgaged more through the sold property should be sold and that if the sale proceeds

giving effect to his title, that is, his right to execute."

- (1911) 10 Ind Cas 552 (554) '36 Mad 104, Vydenatha Asyar v Subramana Pattar (Decree awarding certain sums of money and also certain other sums to be succriated and taxed by the Court later on—Decree held to be capable of execution as a whole when the sums were so assertained)
- (1925) A I R 1925 Mad 981 (983) 88 Ind Cas 204, Mangamma Nayahuralu v Ramdasappa Nayanimataru.
- 7. (1921) A I R 1921 P C 31 (32) 48 Ind App 17 59 Ind Cas 636 (P C).

Note 27

 (1926) A I R 1926 Mad 954 (955) 92 Ind Cas 846: 50 Mad 5, Strammatha Odayar v. Thisgarajostrami Odayar. (Care under Section 48, Civil Procedure Code, but the principle is the same)

[See also (1921) A I R 1921 Cal 456 (456) : 66 Ind Cas 753, Baranashs Korr v. Bhabadeb Chattergee.] Article 182 (Clause 1) Notes 27-29 proved insufficient, the balance should be realized from the mortgagor personally, it was held by their Lordships of the Privy Conceil that time, for an application for execution of the latter part of the decree, ran from the date of the decree, and not from the date when the sale proceeds proved insufficient.²

28. Decree partly executable at once and partly not.—
Where a decree is partly preliminary and partly final, and the latter
part is separately executable at once, time for an application for
execution of that part will run from the date of the decree.¹ In the
undermentioned case,² a preliminary decree was passed for partition
of cortain properties, and along with it a decree was also passed for
costs to be paid by the judgment-debtor. It was held that the order
for costs was separately executable and that an application for
execution must be filed within three years of the date of the decree.
It was also held, however, that the decree-bolder might apply for the
incorporation of the previous order in the final decree, although the
execution of each order independently was barred by limitetion.

Where an interlocatory independ was passed against one of two defendants, and a final judgment was passed later on against both, it was beld that time began to run, so far as the former was concerned, from the date of the interlocatory judgment as if there were two decrees, one bearing the former date.

29. Decree for injunction. — It has been held by the Chief Court of Lower Burma that an application to enforce a decree for injunction, whether mandatory or prohibitory, would be governed by the provisions of this Article.¹

A contrary view, viz., that this Article will not apply, has been taken by all the other Courts.²

According to the High Court of Allahahad, the disobedience to an injunction is a contempt of Court and can be punished at any time. It would seem, according to this Court, that there is no limitation applicable to such cases.

2. (1917) A I R 1917 P O 85 (85) : 45 Ind Cas 436 (437) (P C), Khulna Loan Co. Lid, v. Inanendra Nath Boss.

Note 28

- (1929) A I R 1929 Cal 393 (393, 394); 118 Ind Cas 852, Satish Chandra Chakravaris v. Sarat Kamini Deci.
- 2. (1938) A I R 1938 Pat 188 (189): 175 Ind Cas 45, Salahuddin Ahmad v. Imamuddin.
- 3. (1936) A I R 1936 Rang 313 (314): 164 Ind Cas 718, Hock Sein v. Kyaiklat Municipality.

- (1912) 15 Ind Cas 945 (946) : 6 Low Bur Rul 85, Haji Ahmed Mools Dawgood v. Poker Mull.
- 2. See the cases cited in Foot-Notes (3) to (6).
- (1901) 22 All 465 (466): 1901 All W N 142, Ram Saran v. Chata Singh.
 (1905) 28 All 300 (302): 1996 All W N 10: 3 All L Jour 836, Dhagwan Day, Sukh Des.

Article 182 (Clause 1) Notes 29-80

• According to the High Court of Madras, * none of the paragraphs of the third column of the Article can apply to the first application for the enforcement of a decree granting a problithory injunction, inasmuch as there may be nothing enforceable at the date of the decree and the disobedience itself may take place more than three years after that date. The Article applicable, therefore, would be not Article 182 but Article 181. This view has been adopted by the High Courts of Calcutta and Labore also.*

On each successive breach of the injunction, the decree may be enforced, according to this view, by an application made within three years from such breach.

30. Decree ou which court-fee or stamp duty is payable .-Under the Stamp Act, 1899, a decree for partition is chargeable with duty to the amount prescribed by Article 45 of Schedule 1 of that Act, and the expense of providing the proper stamp is to be home by the parties to the decree in such proportion as the Court directs. The result is that a decree for partition is not formally drawn up until paper bearing the proper stamp is supplied to the Court. Tho decree is then engrossed on the stamp paper and eighed by the Judge. It was held in Kishor: Mohan v. Provash Chandra, that the date of the decree under the Article is the date of the judgment and limitation hogins to run from that date, although no formal decree can he drawn up until paper bearing a proper etamp is supplied to the Court. "The delay in signing the decree," said their Lordships, "was due not to any fault of the Court or to any cause beyond the control of the parties, but solely to the delay of the parties in supplying the requisite stamped paper. Any party desiring to have the decree executed might have inruished the stamp paper at any time leaving the expense of providing it to be adjusted by the Court in connexion with the costs of the execution. The circumstances disclose no ground for saying that limitation did not run from the date of the decree as provided by Article 182 of the Limitation Act."2 This decision was followed by the High Court of Allahahad in a case where the Court passed a decree in favour of the plaintiff but made an order that the decree will not issue until a certain amount of additional court-fee was deposited by the plaintiff into Court, and

(1919

 ^{(1903) 26} Mad 780 (786) 13 Mad L Jour 412, Rungasah Goundan & Co 7. Nanjappa Rou.

^{(1905) 29} Mad 314 (317), Venhatachalam Chetts v. Veerappa Pellas

 ^{(1922) 66} Ind Cas 166 (167) (Lah), Udmi v. Sohan Lal (1905) 29 Mad 314 (317), Venkotachalam Chelis v. Veerappa Pulia-Note 30

^{1. (1924)} A I R 1924 Cal 331 (352) 72 Ind Ca. 646.

^{2.} See also (1918) 19 Ind Cas 410 (410) (Cal) Bha, an Bekarry, Girne Carrier

Article 182 (Glause 1) Notes 30-31 that when it was deposited, it will be included in the costs. It was held that the date of the decree was the starting point of limitation for an application for execution of the decree.³

In a suit for mesne profits or for an account, where the amount decreed is in excess of the amount claimed, Section 11 of the Court-fees Act expressly provides that the decree stall not be executed until the additional court-fee in the excess amount shall have been paid to the proper mifner. Such a decree would clearly be incapable of execution until the additional fee is paid, and it has been held accordingly in the undermentioned cases that time will run only when the court-fee is actually paid. On the principles discussed in Note 26, and, the Article applicable to an application for the execution of such decrees would be Article 181. A contrary view, namely that the decree cannot be said to be not capable of execution in such cases, has been held by the cases dited below.

31, Decree becoming inexecutable by reason of subsequent. events. - A obtained a decree for money against B on 20th April 1922. On 3rd May 1924, B put in a petition stating that he had discharged the debt and praying that satisfaction of the decree might be entered up. An order was made to that effect by the Court on 23rd December 1924. A appealed from the said order and the Appellato Court, on the 26th February 1926, reversed it and held that the decree was unsatisfied. The decree bolder A applied on 9th June 1928 for execution. It was beld that the application was not barred.1 As has been seen in Note 11 to Section 9 ante, where a cause of action is, through Court or otherwise, satisfied or discharged, limitation stops running in regard to such cause of action on the fundamental principle that limitation always implies an existing cause of action, and in such cases where the satisfaction or the discharge of the cause of action is nullified by subsequent events, the plaintiff or the applicant, as the case may be, is entitled to a fresh cause of action, consequent on such nullification, and a fresh period of limitation in respect of such cause of action. The decision referred to above seems to have proceeded only on this principle. The Article applicable to the application based on the fresh right to

^{3. (1927)} A I R 1927 All 835 (336): 100 Ind Cas 476, Buddhu Khan v. A.

 ⁽¹⁹⁰⁴⁾ I All L Jour 350 (352), Subhagga Singh v Shita Nath Singh.
 (See also (1920) Å I R 1920 Nath 370 (972); 59 Ind Cas 385, Natharia Routher v. Muhammad Routher.

Rowther v. Muhammad Rowther.

 ⁽¹⁹³⁸⁾ A I R 1938 Lah 326 (327): 178 Ind Cas 202, Uttam Chand Kapur & Sons v. Sayad Hamad Ait.
 (1930) A I R 1930 Nag 241 (241) 122 Ind Cas 438, Mt. Ehurub v. Rahmatbi-Nota 34

 ^{(1934) 67} Mad L Jour 24 (N R C), (Affirming on appeal A I R 1933 Med 785-(787).)

column of Article 182 would apply to such a case.

32. Decree on condition to be performed by the decree. holder himself .- There is a conflict of opinion on the question whether a decree in favour of A, on payment by him to the sudement. debtor of a certain sum of money, is a decree which is capable of immediate execution, and in respect of which time for an application for execution will run from the date thereof. According to the High Courts of Allahabad1 and Bombay2 and the Chief Court of Oudb.5 such a decree is not capable of immediate execution, eyen though the payment had to be made by the decree-holder himself. On the other band, it has been held by the High Court of Madras and the Judicial Commissioner's Court of Nagpurs that such a decree is capable of immediate execution, and that time will run nader Article 182 clause I from the date of the decree. In Rungiah Gounden & Co. v. Nanjappa Row, their Lordships of the Madras High Court observed. "It may well be doubted whether a decree in a pre-emption suit is not one enforceable at its date, masmuch as it is perfectly open to the decree helder to pay the amount into Court on the date of the decree and apply for execution." In Ramappayya v. Charda Bhatta,7 where the decree directed the judgment debtor to surrender the garden claimed in the suit on the plaintiff paying him a certain sum of monoy for improvements, those Lordships of the Madras High Court observed that the decree holder might have paid this at any time after the decree, and his application for delivery more than three years from the date of the decree was therefore time harrod.

- (1902) 24 All 300 (302) 1002 All W N 60, Chhedi v Lalu (Article 181 applied)
 - (1919) A I R 1919 All 221 (225) 51 Ind Cas 576, Mt Rulming Eugr v. Sheo Dat Eas (Do)
 - (1931) A I R 1931 All 326 (327) 131 Ind Cas 559, Siri Narain Tewari v. Brit Narain Rai
 - [But see (1892) 14 All 350 (354) 1892 All W N 40, Bandhu Bhagat v. Shah Muhammad Taga]
- (1938) A I R 1938 Born 367 (369) 177 Ind Cas 499 I L R (1993) Bom 649, Gopal Sattu v Duyanu Maruti
- (But see (1899) 23 Bom 592 (594) I Bom L R 31, Marut, v Krishna) 3 (1919) A I R 1919 Oudh 892 (392) 22 Oudh Cas 82 52 Ind Cas 156.
- Chandula Prasad Singh v Kalu (1928) A I R 1928 Oudh 286 (287) 110 Ind Cas 77 . 3 Luck 578, Irshad
 - Ahmad v Mt Saidunnisa.
 - (1911) 10 Ind Cas 187 (188) 14 Oudh Cas 100, Ajudhra Singh v. Driggal Singh.
- 4. (1903) 26 Mad 780 (786) 17 Mad L Jone 412, Rungiah Gounden & Co v Nanjappa Roio.
 - (1910) 7 Ind Ca. 568 (568) (Mad), Ramappaya v. Charda Bhatta.
- 5. (1931) A I R 1931 Nag 54 (56) 26 Nag L R 353 130 Ind Cas 148, Dada v Ganpatrao
- 6. (1902) 26 Mad 780 (786) : 13 Mad L John 412. 7. (1910) 7 Ind Can 568 (568) (Mad).
- 1. (1910) 1 1nd Cas 305 (300) (31ad

Article 182 (Glause 1) Notes 30-31

that when it was deposited, it will be included in the costs. It was held that the date of the decree was the starting point of limitation for an application for execution of the decree.³

In a suit for mesne profits in fir an account, where the amount decreed is in excess if the amount claimed, Section 11 of the Court-feers Act expressly provides that the decree shall not be executed until the additional court-fee in the excess amount shall have been paid to the proper afficer. Such a discree would clearly be incapable of execution until thin additional fen is paid, and it has been held accordingly in the undermining cases that time will run only when the court-fee is actually paid. On the principles discussed in Note 26, ante, the Article applicable to an application for the execution of such decrees would be Article 181. A contrary view, namely that the decree cannot be said to be not capable of execution in such cases, has been held by the cases cited below.

31. Deorce becoming inexecutable by reason of subsequent. events. - A obtained a decree for money against B on 20th April 1922. On 3rd May 1924. B put in a petition stating that be bad discharged the debt and praying that satisfaction of the decree might be entored up. An order was made to that effect by the Court nn 23rd December 1924. A appealed from the said order and the Appellata Court, an the 26th February 1926, reversed it and beld that the decree was unsatisfied. The decree-holder A applied on 9th June 1928 for execution. It was held that the application was not barred.1 As has been seen in Nate 11 to Section 9 ants, where a cause of action is, through Court or otherwise, satisfied or discharged, limitation stops running in regard to such cause of action on the fundamental principle that limitation always implies an existing cause of action, and in such cases where the satisfaction or the discharge of the cause of action is nullified by subsequent events, the plaintiff or the applicant, as the case may be, is entitled to a fresh cause of action, consequent on such nullification, and a fresh period of limitation in respect of such cause of action. The decision referred to above seems to have proceeded only on this principle. The Article applicable to the application based on the fresh right to

^{3. (1927)} A I R 1927 All 335 (336): 100 Ind Cas 476, Buddhu Khan v. A.

Boner,
4 (1904) 1 All L Jour 950 (352), Subhagga Singh v Shiva Nath Singh.

[[]See also (1920) A I R 1920 Mad 970 (972); 59 Ind Cas 895, Natharsa Routher v. Muhammad Rowther.

⁽¹⁹³⁸⁾ A I R 1938 Att 539 (54th), I L R 1938 Att 848: 177 Ind Cas 875, Babu Ram v. Gopal Sahas. (Sunt for account — Article applicable seems to have been assumed to be Art. 182 — It is submitted this is not correct.)]

^{5 (1938)} A I R 1938 Lah 326 (327): 178 Ind Cas 202, Uttam Chand Kapur & Sons v. Sayad Hamid Ali.

⁽¹⁹³⁰⁾ A I R 1930 Nag 241 (241). 122 Ind Cas 438, Mt. Bhuribiv. Rohmalbi-

Note 31

 ^{(1934) 67} Mad L Jour 24 (N R C), (Affirming on appeal A I R 1933 Mad 785-(787).)

column of Article 182 would apply to such a esse.

32. Decree on condition to be performed by the decreeholder himself. - There is a conflict of opinion on the question whether a decree in favour of A, on payment by him to the judgmentdebtor of a certain sum of money, is a decree which is canable of immediate execution, and in respect of which time for an application for execution will run from the date thereof. According to the High Courts of Allahahad1 and Bombay3 and the Chief Court of Oudh,3 such a decree is not capable of immediate execution, even though the payment had to be made by the decree-holder himself. On the other hand, it has been held by the High Court of Madras' and the Judicial Commissioner's Court of Nagpur5 that such a decree is capable of immediate execution, and that time will run under Article 182 clause 1 from the date of the decree In Rungiah Gounden & Co. v. Nanjappa Row, their Lordships of the Madras High Court observed: "It may well be doubted whether a decree in a pre-emption spit is not one enforceable at its date, masmuch as it is perfectly open to the decree-holder to pay the amount into Court on the date of the decree and apply for execution." In Ramappayya v. Charda Bhatta,7 where the decree directed the judgment-debtor to surrender the garden claimed in the suit on the plaintiff paying him a certain sum of money for improvements, their Lordships of the Madras High Court observed that the decree-holder might have paid this at any time after the decree, and his application for delivery more than three years from the date of the decree was therefore time-barred.

- 1, (1902) 24 All 300 (302) 1902 All W N 60, Chhed: v Lain. (Article 181 applied)
 - (1919) A I R 1919 All 224 (225) 51 Ind Cas 576, Mt. Ruhmma Kuar v. Sheo Dat Rai (Do)
 - (1931) A I R 1931 All 326 (327) 131 Ind Cas 559, Sire Narain Teware v. Brey Narain Rai
 - [But see (1892) 14 Ali 850 (354) 1892 Ali W N 40, Bandhu Bhagat v. Shah Muhammad Tagu]
- (1938) A I R 1938 Bom 367 (369) · 177 Ind Cas 499 I L R (1938) Bom 649, Gopal Saitu v Dayanu Maruis
- 3. (1919) A 1 R 1919 Oudh 392 (392) . 21 Oudh Cas 82 : 52 Ind Cas 150 Chandila Prasad Singh v Kolu
- (1929) A I R 1928 Oudh 286 (297): 110 Ind Cas 77: 3 Luck 578, Irehad Ahmad v. Mt. Saidunnisa.
- (1911) 10 Ind Cas 187 (189): 14 Outh Cas 100, Azudhua Singh v. Driggal Singh.
- 4. (1903) 26 Mad 780 (786) 13 Mad L Jour 412, Rungiah Gounden & Co v. Nanjappa Row.
- (1910) 7 Ind Cas 568 (568) (Mad), Ramappaya v. Charda Bhatta. 5. (1931) A I R 1931 Nag 54 (56) . 26 Nag L R 353 : 130 Ind Cas 148, Dada v.
- Ganpatrao. 6. (1902) 26 Mad 780 (786) : 13 Mad L Jour 412.
- 7. (1910) 7 Ind Cas 568 (568) (Mad).

Article 182 (Clause 2) Notes 32-33 The High Courts of Allahabad and Bomhay have held in the undermentioned cases, that though a decree in favour of the plaintiff on condition of his paying a sum of money to the defendant is not a decree capalle of execution at its date and therefore Article 182 is inapplicable, time will, nevertheless, run under Article 181 from the date of the decree itself, as there is nothing preventing the plantiff in such cases from paying the amount at once and applying for execution.

CLAUSE 2.

33. Appeal. — This clause provides for a fresh starting point of limitation for execution in cases where there has been an appeal. The expression "appeal" in this clause will include civil revision petitions also. In Nagendra Nath Dey v. Suresh Chandra Dey, their Lordships at the Privy Council observed as follows: "There is no definition of nppeal in the Oirl Procedure Code, but their Lordships have no doubt that my application by a party to an Appellate Court, asking it to set naide or revise a decision of a sub-ordinate Court is nn appeal within the ordinary acceptation of the term...," See also Raya Rajeshwara Setupati Avergal v. Kamid Rowthen," where their Lordships observed as follows: "From tid Browthen," to such a case from the Munsif's Court, i. e., civil revision petition, was preferred to the High Court of Madras."

It has been held that "appenl" in this clause does not necessarily mean a bona fide appeal.

An application for *leave* to appeal to the Privy Council is not an appeal.⁴³

- 8. (1931) A I R. 1931 All 826 (327) · 131 Ind Cas 559, Sur. Narain Tewars v. Brsj Narain Rei.
 - (1938) A I R 1938 Bom 367 (369): 177 Ind Cas 499: I L R (1938) Bom 649, Gopal Sattu v. Dryanu Maruti

- 1. (1937) A I R 1937 Mad 3e5 (390) : 168 Ind Cas 561 · I L R (1937) Mad 616
 - (F B), Chedambara Nadar v. Rama Nadar. (Overtuling 36 Mad 185.) (1918) A I R 1910 Cal 866 (868) : 44 Ind Cas 141, Gurupada Haldar v
 - Tarit Bhusan Roy Chowdhury.

 [See (1909) 4 Ind Cas 629 (631) (Lab). Mastan Shah v. Pahluon Shah (Where a petition for revision has been rejected by an analysis of the revision has been rejected by an analysis of the revision for revision than the research and aimlatify
 - [But see (1913) 20 Ind Cas 563 (564) (Lah), Fusa v. Surjan]
- 2 (1932) A I R 1932 P O 165 (167) : 137 Ind Cas 529 : 59 Ind Apr 283 : 60 Cal 1 (P C).
- 3 (1926) A I R 1926 P C 22 (24): 53 Ind App 74: 49 Mad 335: 94 Ind Cas 822
- (1924) A I R 1924 Cal 349 (350) : 74 Ind Cas 679, Basanta Kumar Roy v. Mannuri Dass.
- 42.(1900) 24 Mad 1 (12). 2 Born L R 771 · 27 Ind App 197 . 10 Mad L Jour 221. 4 Cal W N 725 · 7 Sar 676 (P C), Venkata Subbamma v. Venkatrama Rao.

34. Appeal, whether should be against the decree or order sought to he executed. - The appeal referred to in clause 2 need not necessarily be against the decree or order sought to be executed. The words of the clause would cover any appeal which is capable of affecting the decree or order sought to be executed. In Nagendra Nath Dey v. Suresh Chandra Dey,2 their Lordships of the Privy Council observed as follows. "It is at least an intelligible rule that so long as there is any question sub judice between any of the parties, those affected shall not be compelled to pursue the so often thorny path of execution which, if the final result is against them, may lead to no advantage." Hence, where, pending an appeal from a preliminary decree, a final decree is passed, and thereafter, a decree is passed in the appeal, limitation for the execution of the final decree will only run from the date of the decree passed in the appeal and not from the date of the final decree.3 So also, where an application for review of a decree is allowed and an appeal is preferred against the order allowing the roview application, limitation for the execution of the decree will run from the date of the final order of the Appellate Court in such appeal *

A decree was passed in review, altering the decree originally passed in the suit. There was an appeal against the decree on review and such decree was set aside in the appeal with the result that the decree originally passed in the case was restored. It was held that limitation for the execution of such decree ran from the date of the appellate decision setting aside the decree passed on review.*

Suppose an application to set aside an ex parts decree is dismissed and an appeal is proferred against the order dismissing such application, which appeal is also dismissed. It will be clear from the above discussion that himitation for the execution of the exparts decree will run, in such a case, not from the date of the

Note 34

- 1. (1937) A I R 1937 Mad 421 (422) : 171 Ind Cas 980, Koyalutts v. Veeran-
- kutts. 2. (1932) A I R 1932 P C 165 (167): 59 Ind App 293: 60 Cal 1: 137 Ind Cas 529 (P C).
- 3. (1937) A I R 1937 Mad 421 (428) : 171 Ind Cas 990, Koyalutti v. Veeran-lutti. (Discenting from A I R 1933 Mad 315.)
 - (1928) A I R 1929 Pat 581 (581) * 110 Ind Cas 483, Samar Singh v. Decanandan Prasad Singh.
 - (1927) A I R 1927 Pat 215 (218): 6 Pat 780: 102 Ind Cas 811, Somar Singh v. Deomadan Frasad Singh. 4, (1933) A I R 1933 Bom 235 (257): 57 Bom 388: 147 Ind Cas 1297, Na jappa
 - Bandappa v. Gurushantappa Shankrappa. (1936) A I R 1936 Rom 162 (163) : 162 Ind Cas 223, Narayan Ganpal v. Radhaba Krishnajs.
- (1882) 4 All 274 (276): 1882 All W N 25: 6 Ind Jux 597, Narnnyh Sewak v. Madho Das.

Artiols 182 (Clause 2) Notes 34-35 decree but from the date of the appellate order dismissing the appeal from the order refusing the application to set aside the ex parte decree, for if the appeal from such order succeeds, the ex parte decree itself would cease to exist.

But it has been held in some decisions that in such cases, limitation for the execution of the exparte decree, runs from the late of the exparte decree and not from the date in the appellate order. These decisions proceed on the view that an appeal within this clause is an appeal against the decree or order sought to be executed. It is submitted that this view is not correct.

An appeal against an order passed in proceedings for the execution in a decree cannot affect the decree in any way and such an appeal, therefore, cannot give a fresh starting point of limitation for execution in respect of the decree.

35. Appeal against portion of decree, if saves limitation for execution of whole decree.—In Nagendra Nath v. Sureth Chandra Dey; A and B were co-mortgages under a mortgage. A brought a suit on the mortgage claiming that B had assigned his interest in the mortgage to him. This claim was overruled and a decree for sale was passed in which it was provided that B was entitled to receive a certain amount from the cale proceeds of the mortgaged property. A appealed against B in respect of this provision in the decree. The pidgment-dehter was not joined as a party to this appeal. The appeal was dismissed. Then B applied for execution of the mortgage decree It was contended that limitation for the application ran int from the date of the dismissal of the appeal but from the date of the original decree. The contention was based, inter also, on the following was grounds: 1. that an appeal in order to save limitation under clause 2 of the Article must be one to which the persons affected

6. (1939) A I R 1939 Mad 157 (158), Srs Ramchandra Rao v. Venkaleswara Rao

(1881) 8 Cal 248 (250) : 10 Cal L R 143 : 6 Ind Jur 357, Lutful Huq v. Sumbhu Din Pattuck.

(1937) A I R 1937 Pat 337 (340) : 16 Pat 305 : 169 Ind Cas 581, Firm Sukhnandan Suich v.

. Anrudh Singh.

(1891) 16 Bom 123 (124), Junaji v. Ramchandra.
(1931) A I B 1931 Cal 332 (333): 131 Ind Cas 263, Profulla Kumar Bast v.

Sorojbola. (1927) A I R 1927 Cal 904 (905) : 54 Cal 1052 : 104 Ind Cas 466, Fakir

Raf v. Gurdilla 1 Cas 728, Jabar-

khan v Bahim Khan (1917) A I R 1917 Pat 157 (158) • 44 Ind Cas 575 : 3 Pat L Jour 119, Raibrif-

raj v. Nauratanlal. 8. (1883) 5 All 236 (237) . 1883 All W N 5, Hulass v. Masku.

(1926) A I R 1926 Put 129 (130): 89 Ind Cas 896, Ibrahim Hussain Khan v. Sheopralap Narain.

Note 35
1. (1982) A I R 1992 P C 165 (167): 137 Ind Cas 529: 59 Ind App 283: 60 Cal
1 (P C).

i. e., in the present case the jndgment-dehtors, were parties; and 2. that it must also he one in which the whole decree was imperilled. Their Lordships of the Privy Concoll in repelling the above contentions observed that the questions raised had been the subject of much difference of opinion in India. After referring to certain decisions to illustrate their statement, their Lordships proceeded as follows:

"Their Lordships think that nothing would be gained by discussing these varying authorities in detail. They think that the question must be decided upon the plain words of the Article: where there has been an appeal,' time is to run from the date of the decree of the Appellate Court. There is, in their Lordships' opinion, no warrant for reading into the words quoted any qualification either as to the character of the appeal or es to the parties to it: the words mean just what they say. The fixation of periods of limitation must always he to some extent arhitrary, and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is, their Lordships think, the only safe guide It is at least an intelligible rule that so long as there is any question sub judice between any of the parties, those affected shall not be compelled to pursue the so often thorny path of execution which, if the final result is against them, may lead to no advantage. Nor in such a case as this is the judgment-debtor prejudiced. He may indeed ohtain the boon of delay, which is so dear to debtors, and if be is virtuously inclined, there is nothing to prevent his paying what he owes into Court. But whether there be or he not a theoretical justification for the provision in question, their Lordships think that the words of the Article are plain, and that there having been in the present case an appeal from the mortgage decree of the 24th June 1920, time only ran against the appellants (the applicants for execution) from 24th August 1922, the date of the Appellate Court's decree."

It is clear from the above that although an appeal may have heen proferred only against a portion of the decree, limitation will be sayed under clause 2 in respect of the whole decree. Similarly,

^{2. (1895) 17} All 103 (105) : 1895 All W N 20, Badt un-nissa v. Shams-ud-

^{(1877) 1} All 503 (509), Imam Als v. Dasaunds Ram.

^{(1893) 18} Bom 203 (205): 1893 Bom PJ 79, Sathalchand Rikhawdas v. Velchand Gujar.

⁽¹⁹²⁷⁾ A I R 1927 Cil 89 (90) : 53 Cal 901 : 97 Ind Cas 839, Abdul Alim v. Abdul Hafer

⁽¹⁹³⁴⁾ A I R 1934 Lah 318 (318): 15 Lah 257: 147 Ind Cas 639, Ghulam Hussain Shah v. Radhha Rans.

Article 182 (Clause 2) Note 25

for the clause to apply it is not necessary that the person by or against whom execution is sought should have been a party to the appeal. Thus, where a decree is passed against several defendants and one of them alone appeals against the decree without impleading the others, limitation for execution of the decree against the non-appealing defendants also will run from the date of the appellate decree. So also, where a suit by A against B and C is decreed against B but dismissed against C, and A appeals against the dismissed of his suit against C without impleading B as a party to the appeal, limitation for execution of the decree against B will run only from the date of the decree in the appeal against C.

- (1995) A.I.P. 1905 Mad 557 (558, 559); 156 Ind Cas 1029, Farminemal v. Belakrabhan Tharrody. (In all cases, what Art. 197 (3), Limitation Art. reference and the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of
- (1902) 25 Mad 31 (92) (F B), Eristnamachariar v. Manasmmal.
- (1699) 23 14d 60 (67): 9 112d L Jose 254, Veraraghara Iyengar v. Fonnarmal.
- (1925) A I R 1925 Pat 40 (43): 79 Ind Cas 791: 3 Pat 227, Somar Singh v-Mt. Premdei Euer.
- 3. (1880) 8 All 573 (575) : 1886 All W N 237, Nur-ul-Hasan v. Mukammad
- Hason.
 (1990) 22 Born 500 (305): 1896 Born P J 579, Aldul Rahiman v. Hailes
 Solda. (Appeal years any arreal by any party and sol an appeal by
- Savia, (Appeal means any appeal by any party and not an appeal by which the whole decree is imperiled.) (1925) A I B 1925 Part 555 (557): 91 Ind Cas 208: 4 Pat 844. His Lel
- (1975) A I B 1975 PRI 555 (554) : 91 Int Cas 505 : 4 Pat 844, His 220 Eumar v. Ganu Mahto.
- 4. (1990) 3 All L Jour 231 (252): 1906 All W N 155, Dhuman Mal v. Panna Lal.
 - (1883) 6 All 14 (15): 1883 All W N 179, Basant Lal v. Najmunnissa Edi. (1881) 4 All 137 (140): 1881 All W N 152, Kithen Sahai v. Collector of
 - Allahabad.
 (1920) A I H 1920 Bom 231 (331): 44 Bom 34; 53 Ind Cas 187, Chollara v.

 Ramachandra. (Decree against principal debtor and surety—Principal
 debtor alone appealing Surely not made party Still, time saved
 - eren against surety.)
 (1903) 1 Ind Cas 453 (460): 33 Bom 23, Shirram v, Sakharam.
 - (1898) 25 Cal 194 (602) : 2 Cal W N 556 (F B), Gopal Chunder Manna v. Gassain Das Kalay.
 - (1880) 6 Cal 194 (196) : 6 Cal L R 573, Mullich Ahmed Zumma v. Mahomed
 - Syed. (1878) 3 Cal L. R 420 (421), Gungamoyee Dassee v. Shib Sunlur Bhutta-charjee.
 - (1908) 1909 Pun L R No. 8: 1907 Pun Re No. 32: 1906 Pun W R 155.

 Anwar Als v. Inayat Als.
 - Anwar Als v. Inayat Als. (1895) 8 Mad L Jour 228 (220), Venlata Chinnaya Rau v. Erishna Char-
 - yolu (1899) 23 Mad 60 (67): 9 Mad L Jour 284, Veraraghava Ayyangar v. Pon-
 - nammal. (1902) 5 Oudh Cas 217 (219, 220). Someshur Dat v. Dunia Prasad.
- (1924) A I R 1924 Pat 160 (161): 2 Pat 712: 77 Ind Cas 357, Panchu Banio v. Anand Thabur.
 (1920) A I R 1920 Cal 840 (841): 47 Cal 818: 60 Ind Cas 915, Saish Chan
 - dra Chaudhuri v. Girish Chandra Chalravarty. (1884) 1884 All W N 138 (138), Ram Lal v. Jagannath.
- (1896) 22 Bom 500 (505, 508):1896 Bom P J 679, Abdul Rahiman v. Maidin Saiba.

Some decisions proceed on the view that where all the parties to the decree have not been parties to the appeal, the applicability of the clause as regards persons who have not been parties to the appeal depends on whether the appeal imperils the whole decree. The clear pronouncement of the Privy Conneil above referred to shows that this view is not correct. As observed by the Madras High Court in Art Chetty v. Theerthamalar Chetty,7 "the question of limitation quest not to be made to depend apon the other question (which is almost always a very difficult and doubtful one) whether the appeal by one of the defendants or as regards a part of the decree of the first Court imperils the decree passed against the other defendants, or the other portion of the decree "8 It may also be noted that under Order 41 Rale 33 of the Civil Procedure Code (a provision which was newly introduced in the Code of 1908) the Appellate Court has the nower to pass any decree or order which the justice of the case may require, notwithstanding that the appeal is as to part only of the decree, and that this power may be exercised in favour of parties who have not themselves filed any appeal or objection against the decree.

36. Appeal by or against one person, whether saves limitation for execution by or against another. - See Note 35 above.

- 6. (1914) A I R 1914 Cal 583 (584, 585) ; 22 Ind Cas 685, Mrs. Christians Benthawn v. Benarts Prosad Chowdhury. (Appeal not imperilling whole decreo... Time runs only from the lower Court's decreo.)
 - (1887) 14 Cal 26 (83), Raghungth Pershad v. Abdul Hve. (Do)
 - (1904) 1 All L Jour 409 (410, 411), Ganga Euar v. Keshar Euar. (Do.) (1881) 4 All 36 (37): 1881 All W N 128: 6 Ind Jur 381, Sangram Singh v. Bugharat Singh. (Do.)
 - (1889) 13 All 1 (12, 18, 16) 1890 All W N 207 (F B), Mashiat-un-Nissa v.
 - Rans (Do) (1930) A I R 1930 All 636 (687): 128 Ind Cas 899, Jadu Nandan Ram v. Parshottam Ginning Co. Ltd. (Do)
 - (1979) 2 Cal L R 471 (473), Hur Prosad Roy v. Enayat Hossain (Do)
 - (1889) 16 Cal 598 (602, 603), Nundun Lall v. Rai Joylishen. [Appeal imperelling whole decree-Time runs from appellate decree)
 - (1926) A I R 1926 All 145 (146) : 48 All 6 : 89 Ind Cas 286, Kashi Prasad v. Mathura Prasad. (Do)
 - (1917) A I R 1917 Pat 177 (178): 37 Ind Gas 883, Jaggt Mohans Dan v. Mahmad Ibrahim Hussain, (Do)
 - (1916) A I R 1916 Cal 783 (786) . 31 Ind Cas 426, Loke Nath Singh v. Gaju Singh. (Do.) (1903) 5 Bom L. R 735 (737), Ramchandra v. Anatagi. (Do.)
 - (1880) 6 Cal 194 (196) : 6 Cal L R 573, Mulled Ahmed Zumma v. Mahomed
 - Syed. (Do.)
- (1874) 21 Suth W R 243 (244), Bhoobunessuree Debia v. Chunder Moonee Debia, (Do)
- 7. (1917) A I R 1917 Mad 691 (692) : 34 Ind Cas 791.
- 8. See also (1899) 23 Mad 60 (67, 68, 69): 9 Mad L Jour 284, Vararaghata Ayyangar v Ponnammal. (The question whether a decree or a portion thereof was or was not imperilled by an appeal need not be taken into consideration.)

Article 182
(Clause 2)
Notes 37-40

- 37. Irregular or incompetent appeal. In Nagendra Nath Dey v. Suresh Chandra Dey, their Lordships of the Privy Council observed as follows: "There is no definition of appeal in the Civil Procedure Code, but their Lordships have no doubt that any application by a party to an Appellate Court, asking it to set aside or revise a decision of a subordinate Court, is an appeal within the ordinary acceptation of the term, and that it is no less an appeal hecause it is irregular or incompetent." Hence, an appeal, though incompetent, will save limitation under clause 2.2
- 38. Appeal should have been admitted.—The words "where there has been an appeal" contemplate cases where the appeal has been admitted. Where the appeal has been rejected before admission, this clause will not anniv.³
- 39. Appeal from amended decree.—Where a decree is smended and an appeal is preferred against the amended decree, limitation for execution of the decree will run under this clause from the date of the amellate decree. *
- 40. "Final decree or order." These words are not used in contradistinction to any preliminary decree or order of the Appellate Court. The words only indicate the decree or order by which the Appellate Court finally disposes of the appeal The words will clearly cover any decree or order of the Appellate Court in which the decree

Note 87

1. (1932) A I R 1932 P C 165 (167) . 137 Ind Cas 529 . 59 Ind App 283 : 60 Cal 1 (P C)

L Pat 430, Kameswhar

- (1931) A I R 1991 Cal 548 (548) · 134 Ind Cas 80, Sarat Chandra v. Joy Shankar Roy (Appellate Court erroneously treating appeal as competent and passing decree—Time for execution runs from appellate decree.)
- (1921) A I R 1921 Sind 132 (134): 79 Ind Cas 477: 16 Sind L R 245, Donald Graham & Co. v. Kewalram.

Note 38

[But see (1889) 16 Cal 250 (252), Akthoy Kumar Nunds v. Uhunaes Mohun Chathats. (The words "where there has been an appeal" mean when a memorandum of appeal has been presented in Court !)

Note 39

 (1929) A I R 1929 Cal 676 (677): 122 Ind Cas 634: 57 Cal 549, Nagendra Nath v. Ambrea Charan.

Article 182 (Clause 2) Note 40

or order of the lower Court is merged and which becomes the only executable decree or order in the case. Thus, where the decree is confirmed by the decree of the Appellate Court, the appellate decree will he a final decree within clause 2 1 But the expression is not confined to such decrees or orders but will also apply to other orders by which the appeal is finally disposed of. In other words, the order of the Appellate Court need not be an executable order. But it must he a sufficient order.

In Abdulla Ashgar Ali v Ganesh Das Vig. their Lordships of the Privy Council observed as follows:

"Their Lordships think that when an order is judicially made by an Appellate Court which has the effect of finally disposing of an appeal, such an order gives a new starting point for the period of limitation prescribed by Article 182 clause 2 of the Act of 1903."

In that case, the Privy Council held that an order of an Appellate Court declaring an appeal to have abated and refusing to set aside the ahatement, was a final order within the meaning of clause 2, although it is clear that such an order cannot supersede the decroe of the lower Court and become the executable decree in the case. Similarly, in Nageudra Nath v. Sureik Chandra, the Privy Council held that although an appeal may be irregular or incompetent, clause 2 would apply, although it is clear that where an appeal is incompetent, the appellate decree cannot supersede the decree of the lower Court.

In Abdul Majid v. Jawahir Lal, the Privy Council held that an order dismissing an appeal to the Privy Council for work of prosecution was not a final order within clause 2 and proceeded further to hold that the decree of the lewer Court had not been constructively turned into a decree of the Privy Council hy such order so as to make the period of twelve years under Article 183 applicable to the case. In giving reasons for the latter view, the Privy Council observed that the order of dismissal did not deal judicially with the matter of the suit and could, in no sense, be regarded as an order adopting or confirming the decision appealed from. In Sachindra Nath v. Maharaj Bhahadur Singh, *the Privy Council

- 1. (1894) 19 Bom 258 (260), Nanchand v. Vethu.
- (1874) 23 Suth W R 57 (57), Bistoo Pershad Chuclerbutty v. Ishan Chunder Roy
- 2 (1933) A I R 1933 P C 68 (70): 142 Ind Cas 326: 60 Ind App 83: 60 Cal 662 (P C), Abdulla Ashgar Als v. Ganesh Das Vey. (1882) 9 Cal 100 (102), Warr Mahton v. Luist Sing.
- (1999) A I R 1933 P C 68 (70): 142 Ind Cas 326: 60 Ind App 83: 60 Cal 662 (P C).
 (1993) A I R 1932 P C 165 (167]: 137 Ind Cas 529: 60 Cal 1: 57 Ind App
- 283 (P C). 5. (1914) A I R 1914 P C 66 (67) : 36 All 350 : 23 Ind Cas 649 (P C)
- 5. (1914) A I R 1912 P C 187 (190) : 49 Cal 203 : 49 Ind Cas 510 (P C)
 6. (1922) A I R 1922 P C 187 (190) : 49 Cal 203 : 49 Ind App 335 : 74 Ind Cas
 660 (P C).

Article 182 (Clause 2) Note 40

again held that an order dismissing an appeal to the Privy Council for want of prosecution was not a final order within clause 2. In doing so, it relied on the earlier decision in Abdul Majid v. Jauahir.* After stating that it had been held in that case that the period of three years under Article 182 ran, in such cases, from the date of the decree appealed against and not from the date of dismissal of the appeal of round on which, according to it, the decision in the earlier case had heen hased. This ground was expressed to be contained in the passage in the earlier decision, wherein it had been held that inasmuch as the order of dismissal for want of prosecution did not deal judicially with the matter of the suit and could in no sense he regarded as an order adopting or confirming the decision appealed from

Article 183

in Sachindra Nath's case, that the Privy Council held in that case that an order of an Appellate Court, to come within the purview of clause 3, must be one dealing indicially with the matter of the suit and superseding the decree or order appealed from so as itself to become the excentable decree or order in the case. But, as already pointed out, the later decision of the Privy Council in Abdulla Ashgar Ali v. Ganesh Das Vug³ clearly shows that this is not the view of the Privy Council. It will be seen from the decision in that case that the emphases, in the view of the Privy Council, is not on the order of the Appellate Court dealing judicially with the matters of the suit but is on the order dealing judicially with the matters before the Appellate Court.

It will follow from the above discussion that the view expressed in some decisions' that clause 2 only applies to cases where the decree or order of the Appellate Court confirms, modifies or reverses the decree or order of the lower Court and does not apply where an appeal is simply dismissed as being incompetent, is not correct.

On the principles discussed above, although the appeal is not decided on the merits and is simply dismissed as barred by limitation, or as heing insufficiently stamped, clause 2 will apply

^{7. (1926)} A I R 1926 AH 440 (441): 48 AH 377: 91 Ind Cas 961, Nandlal v. Dharam Kwit.

⁽¹⁹²³⁾ A I R 1923 Cal 288 (289): 68 Ind Cas 727, Ram Ratan Chowdhury V. Unendra Chandra Das.

 ⁽¹⁹³¹⁾ A I R 1931 Pat 422 (428). 134 Ind Cas 425: 11 Pat 430, Kameshwar Singh Bahadur v. Bent Madho Singh.

^{(1908) 30} All 290 (295) . 1908 All W N 109 : 5 All L Jour 584, Asma Bibs v.

^{(1834) 1894} All W N 46 (47), Murlidhar Singh v. Tapeshri Rai.

^{(1889) 16} Cal 250 (252), Alchoy Kumar Nundy v. Chunder Mohun Chalhali. 9. (1898) A I R 1938 Pat 79 (80): 173 Ind Cas 615, Krishna Kant Prasad v. Radhev Sungh.

⁽¹⁹²⁴⁾ A I R 1924 Cal 349 (350): 74 Ind Cas 679, Basania Kumar Roy v. Manura Dasi.

..

Article 182 (Clause 2) Notes 40-41

and time will run only from the date of the appellate order. Similarly, where an appeal is dismissed on the representation of the appellant's counsel that he is unable to support the appeal, time for execution of the decree appealed against runs only from the dismissal of the appeal 10

Where, on appeal, the decree of the Conrt below is reversed and a fresh decree is directed to be prepared by the lower Court, the fresh decree prepared is really and only the decree of the Appellate Court and must be taken to hear the date on which the appellate indement was pronounced.11

41. Abatement of appeal. - Where an appeal from a decree abates and the Appellate Court passes an order declaring the appeal to have abated, such order is the final order of the Appellate Court within the meaning of clause 2 and, as such, will furnish a new starting point of limitation for execution of the decree. In Abdulla Ashgar Ali v. Ganesh Das Vig,2 their Lordships of the Privy Council observed, with reference to such an order of abatement, as follows:

"In the case now before their Lordshins it is manifest that there was an order of the Appellate Court, and that it did deal judicially with the matters before it The Judicial Commissioner (the Appellate Court in question) considered the judgmentdebtor's contention (the indement debtor was the appellant in the Judicial Commissioner's Court) that his appeal had not

(1885) 7 All 887 (888) . 1885 All W N 260, Rup Singh v. Mukhraf Singh, 10, (1908) 80 All 395 (386) . 1908 All W N 161 : 5 All L Jour 580, Farlur Rahiman v. Shah Muhammad Khan.

11. (1928) A I R 1928 Oudh 223 (229) 103 Ind Cas 112, Jan Lal v. Mahommad Harcon

Note 41

1

(1905) 9 Cal W N 67 (67) (S N): 1 Cal L Jour 17n, Ramgati Dhur Nogendra Lat Chowdhry.

application for execution brought within three years of the decree is not barred li

[But see (1921) A I R 1921 Pat 280 (283, 284), 53 Ind Cas 377, Krishna Prasad Singh v. Wajir Narain Singh. [The test appears to be whether there is a final decree or order of the appellate Court which can be executed and in the case of abatement there is not.)]

(1897) 20 All 124 (126) ; 1897 All W N 218, Faral Hussin v. Faj Bahadur. 2. (1933) A I R 1933 P C 68 (70): 142 Ind Cas 526: 60 Ind App 83: 60 Cal 662 (P C)

Artlele 182 (Clause 2) : Note 41

ahated and held that it had . . . , He rejected the application to set aside the abatement. Whether the order made was right or wrong is immaterial: there was no appeal against it, and it was, in the circumstances, clearly final. Their Lordships think that when an order is judicially made by an Appellate Court, which has the effect of finally disposing of an appeal, such an order gives a new starting point for the period of limitation prescribed by Article 182, clause 2 of the Act of 1908."

Pending an appeal by a judgment-debtor, the decree-holder dies. A wrong person is brought on the record as the legal representative of the deceased respondent and the Appellate Court, on the consent of such person, passes a decree setting aside or modifying the decree of the lower Court. The true legal representative of the deceased person then applies for the execution of the decree of the lower Court on the ground that the appellate decree does not bind him. In Balaram Das Bhagat v. Raja Mukunda Deb.3 it has been held by the High Court of Calcutta that in such a case the applicant for execution will be entitled to compute limitation from the date of the appellate decree, as the case comes within the plain grammatical meaning of clause 2. With reference to the contention that the clause applies only to cases where the application for execution is made in respect of the final decree of the Appellate Court and not to cases where the application relates to the decree of the lower Court, the High Court observed as follows :

"In our opinion, the second clause should not he interpreted to the detriment of the decree holder in the case before ns. hecause, as stated in Nundun Lall v. Rai Jaukishen, in a question of limitation, the Court will adhere as strictly as possible to the terms of the law. It has not been disputed, and it cannot be seriously disputed, that the phraseology of the clause in question, strictly construed, completely covers the case hefore us. It is further clear that the first clause of Article 182 applies to cases in which the application is made for execution of the decree of the Conrt of Appeal, because that decree, whether made in affirmance, or reversal or modification of the decree of the primary Court, is the only decree capable of execution, on the principle explained by this Court in Ramcharan v. Lakhikant and by the Judicial Committee in Kistokinkur v. Burrodacaunt. If this view is adopted, it is clear that Clause 2 ought not to be interpreted in the sense suggested by the appellants, because it is well settled, as was pointed out by Sir George Jessel, M R, in Boatwright v. Boatwright,7 that a Court would be slow to interpret a statute of limitation so as to affect

^{3, (1912) 16} Ind Cas 870 (372) (Call.

^{4. (1889) 16} Cal 598 (602) 5. (1871) 16 Suth W R 1 (4, 5) 7 Beng L R 701 (F B)

 ^{(1872) 14} Moo Ind App 465 (463, 464) 10 Beng L R 101: 17 Sutb W B 292: 2 Sutber 564: 3 Sar 62 (P C).

^{7. (1873) 43} L J Ch 12 (14] . L R 17 Eq 71 : 29 L T 603 . 22 W R (Eng) 147.

rights as to the enforcement of which there was no doubt. In the case before us, the liability of the appellant has been established by the decree, and we are not inclined to put a narrow construction upon clause 2 with a view to assist him to avoid payment of his just dues."

See also the undermentioned case 8

42. Dismissal of appeal for default, whether gives a fresh start of limitation for execution. — There is a conflict of views among the decisions of the High Courts in India as to whether an order of an Appellate Court dismissing an appeal for default is a final order of an Appellate Court within the meaning of clause 2 so as to give a new starting point of limitation for execution of the decree or order appealed against. According to one view, such an order is not a judicial order and hence does not satisfy the requirements of clause 2. The other view is that such an order does constitute a final order of the Appellate Court within the meaning of clause 2. An examination of the decisions of the Privy Council indicates that the Privy Council favoure the former view.

The question first came up for decision by the Privy Council in Batuk Nath v. Munn De.? In that case, an appeal to the Privy Council had been dismissed for default of prosecution not by an order of the Privy Council but by the office of the Privy Council under the rules of the Privy Council. It was held that as there was no order of the Appellate Court, the dismissal did not furnish a fresh start of limitation.

8. (1924) A I R 1924 Cal 886 (687) Si Oal 842: 81 Ind Cas 859, Erschna Lad Durman v Safyabala Deb: (In this case, on the consent of the person who was erconocusly brought on the record as the legal representative lower Court, was set such and the true legal representative applied for execution of the decree passed by the lower Court on the ground that

- (1932) A I R 1932 Pat 251 (252): 189 Ind Cas 198: 11 Pat 477, Hirday Narayon Singh v. Maheshware Prasad Singh.
- (1936) A I R 1936 Lah 479 (480): 167 Ind Cas 477, Secretary of State v. Mt. Reshmo.
- (1921) A I R 1921 Pat 6 (8) 50 Ind Cas 696, Ragha Prasad Singh v. Jadunandan Prasad Singh.
- [1935] A I R 1935 Lah 7Ti (774) * 16 Lah 564 . 161 Ind Cas 122, Bank of Upper India Lid. v. Sri Kushan Das (1935) A I R 1935 Pesh 199 (129, 130) : 153 Ind Cas 517. Budhu Ram v.
 - Mushtan Shah Singh. (1902) 5 Oudh Cas 143 (145), Baghunath v. Farkhund Ali.
 - (1930) A I R 1930 Pat 146 (148): 123 Ind Cas 415, Gerwal Eaut v. Esqu.
 - (1938) A I R 1933 Pat 401 (402): 175 Ind Cas 558, Ram Rantifaya Prasad Singh v. Kesho Prasad Singh.
- 3. (1914) A I R 1914 P C 65 (66) . 36 AM 284 : 41 Ind App 104 : 23 Ind Cas 644 (P C).

Artiole 182 (Clause 2) Note 42 In the next case, viz. Abdul Majid v. Jawahir Lal, the question again was with regard to the dismissal of an appeal to the Privy Council tand it was held by the Privy Council that such dismissal did not operate to give a fresh starting point of limitation under clause 2. But it is not clear whether the order of dismissal in this case was one by the Judicial Committee itself or one by the office of the Privy Council as in the case of Batuk Nath v. Munni Dei.

In the third case which came before the Privy Council in regard to this question, Sachindra Nath v. Maharaj Bahadur,⁵ the dismissal for want of prosecution was in respect of an appeal to the Privy Council and the dismissal order was not by the Privy Council itself but by the office of the Privy Council. Their Lordships held that such an order of dismissal was not the final order of an Appellate Court within the meaning of clause 2. But the observations of their Lordships are general and are not coofined to cases where the dismissal of the appeal is by the office of the Court and not by an order of the Appellate Court.

In Abdulla Ashgar Ali v. Ganesh Das Vig., the question was as to whether an order of an Appellate Court declaring an appeal to have absted was a final order within clause 2. The Privy Council beld that such an order was a judicial order of an Appellate Court which came within the purvew of clause 2. In Joing so, the Privy Council distinguished the case of Abdul Majid v. Javahn'. The observations made by their Lordships with regard to this case indicate that in the view of the Judicial Committee, an order dismissing an appeal for default of prosecution, although such an order is passed by the Appellate Court itself and not by the office of the Court, is oot a judicial order and hence is not capable of furnishing a fresh string point of limitation under clause 2. After distinguishing the case of Batuk Nath v. Munni Dei, their Lordships in referring to the case of Abduk Maid v. Juvahit Jat's beserved as follows:

"In the second case the question was again as to the effect of the dismissal of an appeal in this Board for want of prosecution. No reference was made to Batuk Nath's case, which had been decided less than a month before, and it does not appear whether the dismissal had been under the Order in Council, but the effect of the decision was the same. Lord Moulton in delivering the judgment of the Board, says. The chief matter of argument before this Board was a contention that the decre which it is sought to enforce had been constructively turned into a decree of His Mayesty in Council and assigned to the date of 13th May 1901, by virtue of the dismissal of the appeal for want of prosecution on that date, and that therefore the period

^{4. (1914)} A I R 1914 P C 66 (67): 36 All 350: 23 Ind Cas 649 (P C), (Reversing 7 Ind Cas 926.)

^{5. (1922)} A I R 1922 P C 187 (190) : 49 Cal 203 : 48 Ind App 335 : 74 Ind Cas 660 (P C).

^{6. (1933)} A I R 1933 P C 68 (70) - 142 Ind Cas 326 : 60 Ind App 83 : 60 Cal 662

Article 182 (Clause 2) Notes 42-44

of limitation was twelve years from 13th May 1901, by virtue of Article 180, Limitation Act (1877). [Under Article 180, twelve years were allowed for the execution of an order of His Majesty in Council.] Their Lordships see no foundation for this contention which appears to have heen the basis of the decision of the Courts below. The order dismissing the appeal for want of prosecution did not deal judicially with the matter of the suit, and could in no sense he regarded as an order adopting or confirming the decision appealed from. It merely recognized authoritatively that the appeal was open to him and that therefore he was in the same position as if he had not appealed at all.

"In the case now before their Lordships it is manifest that there was an order of the Appellate Court and that it did deal judicially with the matters before it"

Thus, it would appear that in the view of the Board as expressed above, even on the assumption that the order dismussing the appeal for want of prosecution which was in question in the case of Abdul Majid v. Jauahir Lat' had been passed by the Judicial Committee (the Appellate Court in question in the case) itself, it was not a 'judicial order' of the Appellate Court so as to give a fresh starting point of limitation under clause 2.

- 43. Order returning appeal for presentation to proper Court. — Where an appeal is presented to a wrong Court and is returned by such Court for presentation to the proper Court, the order returning the appeal is not the final order of an Appellate Court within clause 2 !
- 44. "Appellate Court," meaning of.— The words "Appellate Court" in clause 2 refer to the Court to which the appeal has been preferred and such Court is no less an "Appellate Court" because the appeal has been rejected as incompetent. But where the Court to which an appeal is presented has independently of the question of the competency of the appeal) no invisitation to entertain the appeal, as where an appeal from the decree of a Civil Court is presented to a Revenue Court, the Court to which the appeal has been preferred will not be an "Appellate Court" within the meaning of the clause "Thus, where an appeal is presented to a wrong Court and is returned for re-presentation to the proper Court, the order returning the appeal will not be the order of an Appellate Court within this clause? In other words, the term "Appellate Court" in the clause

 ⁽¹⁹²⁰⁾ A I R 1920 Mad 592 (593) 43 Mad 835 60 Ind Cas 267, Mahomed Abdul Kadir Marakajar v Sarus Pardia Tetar

Note 44

^{1. (1882) 9} Cal 100 (102), Wager Mahton v Lulet Singh.

 ⁽¹⁹²⁰⁾ A I R 1920 Nad 592 (593) 43 Mad 835 60 Ind Cas 257, Malorned Ablul Kadir v Sarai Pandia Tecar.

Article 182 (Clause 2) Notes 44-46 refers to a Court to which the appeal in question has been presented and which, apart from the question of the competency of the appeal, has jurisdiction to dispose of it.

- 45. Withdrawal of appeal. Under the Acts of 1871 and 1877, there was a conflict of decisions as to whether a fresh period of limitation could be counted under clause 2 where the anneal was withdrawn.1 This conflict has been set at rest by the insertion of the words "or the withdrawal of the appeal" in clause 2 in the Act of 1908 and it is now clear that the fresh starting point of limitation under clause 2 will be available even where the appeal is withdrawn.
- 46. Starting point under clause 2. Under this clause, where there has been an appeal, limitation for execution runs from the date of the final decree or order of the Appellate Court.1

A decree for possession was passed by the trial Court. The decree gave the defendant one month from the date of the decree to vacate

Note 45

- (1876) 1 All 293 (295) 1 Ind Jur 450. Hingan Khan v. Ganga Parsad. (No.
 - H. S. Santon, M. S. Santon, J. S. Santon, S. C. Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Control of the Contr (Do)
 - Ishwargar Budhagar. (Do)
 - (1890) 15 Bom 370 (375) 1890 Bom P J 336, Patlon v. Ganu. (Do) (1908) 1908 Pun L B No 87 . 1908 Pun Re No. 54 . 1908 Pun W B No. 40,
 - Bhagwan Singh v. Mohan Lal. (Do) (1891) 1 Mad L Jour 745 (746), Kanara Rurup V Govinda Kurup. (Do.)
 - (1907) 80 Mad 1 (2): 16 Mad L Jour 393 : 1 Mad L Tim 233 (F B), Sadagopa Ramannya Persya Jeeyangar v. Lahshms Doss. (Fresh startingpoint applies.)
- 2. (1928) 94 Ind Cas 890 (891) (All), Ramchandra Nash v. Nasar Als

- 1. (1905) 1905 Pun L R No. 154: 1905 Pun Re No. 8: 1905 Pun W R 22. Ralla Mal v. Mt. Malan (When an application for revision is admitted by the Chief Court, not as a petition for revision but as a further appeal, the ultimate order, passed therein rejecting the appli-cation, ought to be treated as the final order or decree of the Appellate Court for the purpose of clause 2.)
 - (1880) 2 Mad 174 (175), Venkatrayalu v. Narasımha. (Time runs from appellate decree, though an application for the execution of the lower Court's decree has been already filed before the appellate decree is passed.)
 - GOOD FO TLA par toon Tal narth Coul Has Darehad (Trisl
 - (1876) 25 Suth W R 303 (310), Mullick Mahomed Yakoob v. Choudhry Shakh Zukoorul Hug. (Application for refund of money deposited as costs—Limitation for such an application run from the date of trail order in appeal entiting the applicant to a refund and not from the date of original order entitling him to such refund.]

 Page Kant
 - (1871)

the land. The defendant appealed against the decree The appeal Article 182 was dismissed. It was held that limitation ran from the date of the (Clause 3) appellate decree and not from the expiry of one month from such decree.2

Notes 46-46

47. Who is entitled to benefit of clause 2. - Pending an appeal against a decree, the decree was assigned to another. But the assignee was not brought on the record of the appeal. It was held that nevertheless the assignee was entitled to calculate limitation for his application for execution, from the date of the appellate decree.1

CLAUSE 3.

48. "Where there has been a review of judgment." -There is a difference of opinion on the question whether the expression "review of judgment" in clause 3 of this Article is restricted to the meaning it has under Order 47 of the Code of Civil Procedure, or whether it will include any proceeding by which a Court reconsiders its own judgments, such as a proceeding to set aside a decree passed ex narte or a dismissal for default. It was held in some cases under the Act of 1877 which did not contain any clause corresponding to the present clause 4, that where a decree had been amended, it might be regarded as a review of judgment within the meaning of clause 3 of Article 179, corresponding to the present clause 3.1 Those cases are no longer law in view of the introduction of clause 4 in the present Article providing for limitation in the case of amended decrees. The High Court of Allahabad has, in a case under the present Articlo, held that the words "review of judgment" must be applied strictly to a "roview of judgment" as used in other portions of the same Schedule.2 Pullan, J. observed as follows

"The Limitation Act is of the year 1908, the same year in which the Civil Procedure Code was amended, and there is no reason to suppose that the words "review of judgment" have a different significance in the Limitation Act from that which they hear in the Civil Procedure Code, and we find that Articles 161 and 162 provide for limitation for applying for a review of judgment, whereas Article 164 deals with an application for setting aside an ex parte decree"

The High Court of Patna has taken a contrary view.3 According to it, all cases in which the Court reconsiders its own indement are cases of review within the meaning of clause 3, and consequently

2 (1937) A I R 1937 Cal 728 (729) I L R (1938) 1 Cal 171 175 Ind Cas 535, Basanta Aumar Pal v Barley Rahaman Nasshar

Note 47

1. (1930) A I R 1930 All SSO (882) 122 Ind Cas 189, Banke Echara Lal v. Raghubar Dayal

Note 48

1. See Note 50 infra 2. (1932) A I R 1932 All CO1 (602) 139 Ind Cas 692, Suchnanden Singh v. Mt Randers Aunwar

8 (1937) A I R 1937 Pat 937 (341) 16 Pat 306 169 1nd Cap 581, Firm Dedhraf Lachme Naram v. Bhagwan Das

a restoration of a snit or appeal dismissed, will be a review of judgment within the meaning of clause 3. Courtney-Terroll, C.J., observed as follows:

"Now there is no essential difference between orders for recoration and orders for review. Now this tanding the heading in Order 47, the matters dealt with in that Order are reviews for which in pplications are made on certain specified grounds and it is true that in common parlance the term "review" is used for applications based upon the grounds specified in that Order. No Court, having once passed a judgment, can alter the terms of that judgment save upon specified grounds, and one of those grounds is dealt with under the term "restoration." In both cases, hewever, the Court has first to decide whether on the ground specified it is justified in law in reconsidering its own decision, and it other nllews or refuses the application for reconsideration.

"In some cases, after the decision to reconsider it may be necessary, at a subsequent and separate hearing, to deal with the fresh case on ite merits. In some cases, the matter is dealt with at the came hearing and in one judgment the Court decides, firstly, whether the case should be reconsidered and secondly, the result of its reconsideration. But all cases in which the Court reconsiders its own judgment are cases of review within the meaning of clause 3 of Article 182, Limitation Act. Applications for restoration and applications for review (using the word in the narrower sense) are, it is true, senarately dealt with in the Ordere appended to the Civil Procedure Code, These are mere questions of procedure and may be altered by any particular High Court; but the entire jurisdiction of any Court te interfere with its own decision once given is derived from Section 114 of the Code itself where the single word "review" is used."

It is submitted that the Allahabad view is to be preferred. According to the reasoning of the High Court of Patna, orea an amondment of the decree will be a review. This view, however, which, as seen already, had been hold under the Act of 1877, has been impliedly negatived by the Legislature by the introduction of clause 4 of the present Article.

There is alse a difference of opinion on the question as to whether clause 3 applies only where a review has been granted or whether it will apply even where the review has been refused. The words "where there has been a review has been granted by the Court that the clause applies, and this is the general trend of opinion. A contrary view has, however, been held by the High Court of Patna.

^{4 (1866) 5} Suth W R (Misc) 45 (46), Chowdhry Junmenjoy Mullick v. Bissambhur Panjah.

⁽¹⁹²²⁾ A I R 1922 Oudh 148 (148) : 24 Oudh Cas 280 : 66 Ind Cas 205, Raja Bhagwan Baksh Singh v. Mt. Manraji Kunwar.

namely, that the clause will apply even where an application for review has been dismussed, and that time for an application for execution of the decree will run from the date of the dismissal of the application for review.⁵ It is submitted that this view is not correct.

Where an application for roview has been granted, but the order granting the review is appealed against, clause 2 must be applied along with clause 3, and time for an application for execution will run from the dato of the decision in appeal. See Note 34 ante

49. Review in part. — Where a decree is reviewed at the instance of some of the defendants, limitation for the excention of the decree runs from the date of the revised decree even as against the defendants who are not parties to the review proceedings. This is in accordance with the principle of interpretation had down by their Lordships of the Privy Council in Nagendra-Nath v. Suresh Chandra² in construing clause 2 of this Article which contains the expression "where there has been an appeal" Their Lordships there observed as follows:

"There is no warrant for reading into the words quoted any qualification either as to the character of the appeal or as to the parties to it, the words mean just what they say "

CLAUSE 4.

50. "Where the decree has been amended." — There was no provision corresponding to clause 4 of this Article, in Article 179 of the Act of 1877, and there was a conflict of opinion as to whether a fresh starting point for execution was furnished by the amendment of a decree. According to one class of croses, the amendment of a decree was regarded as a review of judgment within the meaning of clause 3 of Article 179 and was held to furnish a fresh starting point under that clause. A contrary view was taken in another class of cases, numely that an amendment could not be

(1886) 10 Mad 66 (67), Kurupani Zamindar v Sadasita.

(1917) A I R 1917 Pat 157 (158) . 44 Ind Cas 575 3 Pat L Jour 119, Ras Briggs v Nauratan Lal.

(1931) A I R 1932 All 601 (602) 139 Ind Cas 692, Sukhnandan Singh v. Mt. Randers Eunuar.

5 (1937) A I R 1937 Pat 937 (339, 341) 16 Pat 306 169 Ind Cu 581, Firm Dedhra; Lachminarain v. Bhaguan Das

Note 49

 (1933) A 1 R 1939 Wad 276 (277) 141 Ind Cas 175, Vastreddy Lamayya v., Mulugu Kotayya.

(1912) 12 Ind Cas 679 (682) 35 Mad 670, Abdul Kadır v. Ayınur Ahammed (Per Sundara Iyer, J., approved in A I R 1916 Mad 1)

2. (1932) A I R 1932 P C 165 (167) 137 Ind Cas 529 59 Ind App 283 60 Cal 1 (P C).

Note 50

(1897) 25 Cal 258 (261, 262) 2 Cal W N 219, Kals Pressumo Eas and Mohan Guha

 (1912) 13 Ind Cas 140 (142) (Cal). Rameswar Singh's Turpit Singh
 (1881) 4 All 137 (141) 1881 All W N 152, Kishen Sahus v Collector of Allahabad.

Article 182 (Clause 4) Note 50

regarded as a review, and that it did not furnish any fresh starting point for execution.²

The introduction of clause 4 in the present Article has now set the conflict at zest. The Legislature must be taken to have impliedly negatived the view that an amendment might be considered to be a review of judgment, though it considered that an amendment should furnish a fresh starting point for execution.

There is a difference of opinion on the question whether the amendment referred to in the clause includes amendments of verbal and clerical errors, and amendments in respect of matters which do not stand in the way of execution of the decree. It was held in the undermentioned eases? that the amendment of a mere clerical or verbal error will not furnish a fresh starting point under the Article.

It was assumed in Mt. Maharani v. Debi Das, that an amendment will not furnish a fresh starting point, unless, in the absence of it, the decree was incapable of execution. A contrary view, namely, that time will run from the date of the amendment irrespective of the character or nature of the amendment, has heen held inotter cases.

- (1901) 24 Mad 25 (26), Venhata jogayya v. Venhatasımhadri Jagapatı Rasu. 2. (1905) 27 All 575 (577): 1905 All W N 108: 2 All L Jour 287, Ashan-Wilah V. Dakhhınidin.
 - (1898) 20 All 304 (307) : 1898 All W N 48, Daya Kishan v. Nanhi Begum.
 - (1891) 18 All 124 (126) : 1691 All W N 32, Kallu Rai v. Fahsman.
- (1909) 3 Ind Cas 391 (392) (Cal), Chholo Ralhal Das v. Jogendra Naram. (Quare Whether an application for amendment of a decree so as to bring it into conformity with the judgment is an application for review.)
- (1907) 1907 All W N 169 (169) : 4 All L Jour 469, Awadh Bihari Pande V. Mahadeo Sahi.
- 3 (1938) A I R 1938 Pat 57 (59) 16 Pat 453 : 174 Ind Cas 418, Ramethwar Narann v. Raghunandan. (Amendment must be one in the real sense of the term in order to give a fresh start)
 - (1932) A 1 R 1932 Oudh 293 (296): 140 Ind Cas 412, Mohammad Mumlas Als v. Mohammad Saadat Als
 - .. 15-265
 - (1917) A I R 1917 Pat 517 (518) . S9 lod Cas 624 · 2 Pat L Jour 286, Adlanand Singh v. Rajkumar Singh.
 - [1937] A I R 1937 Cal 581 (533): 178 Ind Cas 584, Sureshwar Praud v. Maharaj Bahadur Sinka (Mera verbal corrections which are unnecessary—No amendment within Cl. 4.)

reshwar Abinash

- Chandra. (1928) A I R 1928 Oudh 442 (448) 3 Luck 719. 116 Ind Cas 49, Narolam Das v. Sukhras Sunsh.
- (1935) A I R 1935 Mad 97 (98) · 58 Mad 743: 154 Ind Cas 847, Laksmikanta Rao v. Ramayya. (1934) A I R 1934 Oudh 289 (291) · 150 Ind Cas 947, Narottam Dass v. Atal
- Chandra. (1934) A I R 1931 Oudh 43 (44): 147 Ind Cas 815, Haidri Khanam v. Bhawani Shanlar. (Assumed.)

Article 182 (Clause 4) Note 50

High Court observed as follows: "That time should run from the date of the decree as amended has been recognized by the Legislature by the amendment of the Limitation Act in 1908, With regard to the time from which limitation for execution of a decree should be counted, there was a great divergence of opinion between the Allababad High Court on the one side and almost all the

other High Courts on the other. The conflict was set at rest by adding clause 4 to Article 182, Limitation Act, 1908, which says that limitation for purpose of execution should commence from the date of the amended decree. It does not specify the nature of the amendment and therefore it must be said to include all kinds of amendments, whether under Section 152 or under Order 47, Civil Procedure Code, or any other provision of law."

In Lakshmikanta Rao v. Ramayya, Beasley, C. J., observed as follows

"It is argued that the amendment of the decree was merely a formal one and that the final decree was an executable one even in its unamended form. In our view ne are not concerned with that..... . The words of Article 182 clause 4, Limitation Act, are where a decree has been amended, a period of three years' limitation is given starting from the date of the amendment of the decree. It was the amended decree that the decree holder sought, by his subsequent application, to execute. We propose to give the words of that Article of the Limitation Act their plain meaning, following the principle of construction laid down by the Privy Council in A I B 1932 P C 165."

It is submitted that the view last stated is correct and is in consonance with the decision of their Lordships of the Privy Council in Nagendranath v Suresh Chandra,* that the language of the

^{(1886) 8} All 492 (493) 1886 M W N 156, Tars Ram v Man Smoh (Do) (1916) A I R 1916 Cal 511 (518) . 32 Ind Cas 741, Anandram v. Netyananda Barkam (Do l

[[]See also (1914) A I R 1914 Mad 392 (393) 92 Ind Cas 253, Dolla Khodalo Patro . Langarapu dya Bhushano (Nature ol amendment not clear)

^{(1927) 4} I R 1927 Lab 719 (120) 100 Ind Cas 161, Parem Chand v. Budha (Do)

^{(1927) 99} Ind Cas 201 (205) (Oudh), Narolam Dass v Narain Das (1931) 60 Ind Cas 318 (319) (Pat), Baldeo Shukul v Syed Yusuf (Do)

^{(1934) 4} I R 1934 Mad 293 (295) 57 Mad 795 113 Ind Cas 1088. Thiagaraja Therar v Sambasita Therar

⁽¹⁹³⁵⁾ A I R 1935 AM 606 (607) 155 Ind Cas 495, Bahal Singh v Mi Chancit (Fresh decree passed by way of amendment— Time runs from date of amended decree)]

^{6, (1931)} A I R 1931 Cal 323 (326) 131 Ind Cas 258.

^{7, (1985)} A I R 1935 Mad 97 (98) 59 Mad 743 454 Ind Cas 847.

^{8. (1932)} A I R 1932 P C 165 (167) 137 Ind Cas 529 59 Ind App 253 : 60 Call (PC)

Article 182 (Clause 4) -Note 50 Article must be given its plain meaning, that in construing its provisions equitable considerations are out of place, and that the strict grammatical meaning of the words is the only safe guide.

There is also a difference of opinion as to whether a fresh starting point is given by the amendment of the decree after it is harred by limitation

One view is that at the date of the amendment the decree must have been alive and that otherwise clause 4 will not apply. Thus, it was observed in Haidri Khanam v. Bhawan: Shankario as follows:

"It seems to us that clause 4, Article 182, presupposes that at the time of amendment the decree is alive. The basic idea underlying Article 182 is that the decree is unissting at the various points of time from which the limitation starts to run under the provisions of column 3 of the Article. It would not be consistent with the ohyious intention of the Legislature to hold that the decree-holder can get a start for limitation from the date of amendment even in a case where the decree had already heen barred by time when the amendment was made."

In Rahuddin v. Ram Kana: Sen, 11 their Lordships of the Calculta High Court held that a "decree which is capable of execution and is not executed within three years from its date hecomes dead and cannot be revived by a subsequent application for amendment." The High Court of Madras also observed in the undermentande case¹²: "If the literal construction of Article 182 clause 4 is to be accepted, then it would enable a decree. Holder to execute a harred decree."

A second view is that if the application for amendment was made within three years of the decree, clause 4 will apply even though the actual amendment is ordered after three years of the decree. 124

^{9. (1924)} A I R 1924 Lah 329 (329) 73 Ind Cas 461, Jhamman Lal v. Daulat

⁽¹⁹³³⁾ A I R 1938 Mad 815 (319) . 56 Mad 458: 148 Ind Cas 53, Ahamad Kutty v. Kottohkat Kuttu.

⁽¹⁹¹⁶⁾ A I R 1916 Cal 511 (513): 32 Ind Cas 744, Anandram v. Nitiyananda Barham

⁽¹⁹²⁰⁾ A I R 1920 Cal 769 (769) · 59 Ind Cas 186, Rabiuddin v. Ram Kanas

^{(1886) 8} All 492 (494) : 1886 All W N 156, Tarsi Ram v. Man Singh.

⁽¹⁹¹⁷⁾ A I R 1917 Pat 517 (518) · 39 Ind Cas 621 : 2 Pat L Jour 286, Kalanand Snigh v Rajkumar Snigh.

⁽¹⁹³⁴⁾ A I R 1934 Oudh 43 (44) 147 Ind Cas 815, Haidri Khanam v. Bhawani Shankar.

^{10. (1934)} A I R 1934 Oudh 43 (44) 147 Ind Cas 815.

^{11. (1920)} A I R 1920 Cal 769 (769) · 59 Ind Cas 186.

^{12. (1933)} A I R 1933 Mad 315 (318): 56 Mad 458: 148 1nd Cas 58, Ahammad Kuttu v. Kottakkat Kuttu.

¹²a (1930) A I R 1930 Pat 286 (293) 9 Pat 782: 125 Ind C12785, Mt. Bhagwali Kuer v. Narsingh Narayan Singh.

A third view contrary to the first view bas been held in other cases.18 In Lakshmikanta Rao v. Ramayya,16 it was observed that the fact that the decree had already become barred at the date of the amendment or that the amendment applied for was unnecessary, were matters to be dealt with by the Court to which the application had been made for the amendment and that the effect of Article 182 clause 4 is that it is a complete answer to any objection taken with regard to the plea of limitation so far as the earlier decree was concerned. In Narottam Dass v. Atul Chandra.15 it was held that it was not within the province of the executing Court to question whether or not the amendment was properly made, that its duty was confined to execution only and that if it found that an application for execution had been made within three years of the date of the amended decree, then its duty was to proceed with the execution. In Magan Lal v. Sztaram,16 Wort, J., observed as follows:

"The question is in a senso determined on the principle of res judicata. When the application for amendment was made, it would have heen a complete answer by the judgment debtor to the application that the decree was already dead in the sense of its heing barred by limitation, and the amendment having heen made, it must be presumed that that question had no substance. As held by the learned Judges of the Madras High Court, it was not competent for the Court below in this case to sit in appeal on the decision of the Court amending the decice"

It is submitted that the third view is correct on principle

Where a decree, as framed, as meapable of execution, it has been seen already that time does not run agunst the decree-holder. Where such a docree is amended and thus becomes capable of execution, it is clear that limitation will, under clause 4, run from the date of the amendment 17.

```
18. (1934) A I R 1934 Oudh 299 (291) 150 Ind Cas 947, Narottam Dass . Atul
Chandra
```

⁽¹⁹²⁰⁾ A I R 1929 Cal 650 (651) 125 Ind Cas 292, Durga Prasad Das v. Kedarnath Nayah

⁽¹⁹³⁷⁾ A I R 1937 Pat 316 (316) 167 Ind Cas 134 16 Pat 290, Magan Lat Marwars v Sitaram Panna Lai (A I R 1917 Pat 517 held overrolled by A I R 1932 P C 165)

⁽¹⁹²⁸⁾ A I R 1928 Oudh 442 (448) 3 Luck 719 116 Ind Cas 49, Narolam Das v. Sukhraj Singh

⁽¹⁹³⁸⁾ A I R 1938 Pat 57 (59) 16 Pat 453 174 Ind Cas 418, Rameshwar Narain v Raghunandan.

⁽¹⁹³⁵⁾ A I R 1935 Mad 97 (9-1 58 Mad 743 15t Ind Cas 847, Lalshmikanta Rao v Ramayya

^{14. (1935)} A I R 1935 Mad 97 (98) 58 Mad 743 154 Ind Cas 647

^{15. (1934)} A I R 1934 Oudh 289 (291) 150 Ind Cas 947

^{16. (1937)} A I R 1937 Pat 316 (316) 16 Pat 290 167 Ind Cas 134.

^{17. (1926)} A I R 1926 All S44 (386) 48 All 2-1 94 Ind Cas 677, Dela Ballish v Shambhu Dial Gan ja Prasad

^{(1913) 2}I Ind Cas 615 (616) (Cal), Maharraya Praced Sinjh v Abdul Hamid

Artiole 182 (Clause 5) Notes 50-51a

Where an execution petition is filed beyond time and subsequent thereto the decree is amended, the amendment will not save the application already made from the har of limitation, though the case may be different where another application for execution is made after the amendment.18

The words "date of amendment" refer to the date of the Court's order directing the amendment and not the date on which the decree is actually altered or corrected. 19

It has been held by their Lordships of the Privy Council in the undermentioned case²⁰ that where an amendment is made by a Court without jurisdiction, the amendment has no operation, and timefor execution will run only from the date of original decree.

51. Where amended decree is appealed against. - See Note 39, ante.

CLAUSE 8.

51a. Where a previous application has been made. --Clause 5 provides that where there is a previous application for execution or to take a step-in-aid of execution, time runs from the date of the final order on such application. Before the amendment of the clause by Act 9 of 1927, time ran from the date of the application and not from the date of the final order on the application.1

(1921) AIR 1921 Cal 89 (90) : 64 Ind Cas 622, Sanaton Sant v. Dinabandhu Giri

(1907) 11 Oudh Cas 22 (25), Mt. Zubra Bibi v. Mt. Zulaskha Bibi.

(1908) 5 All L Jour 403 (404) : 1903 All W N 191, Behare v. Resal. 18. (1936) A I R 1936 Mad 434 (431) : 161 Ind Cas 969. Administrator-General,

Madras v. Radhahrishna Chettiar. 19. (1926) A I R 1926 Mad 747 (747) : 49 Mad 807 : 95 Ind Cas 196, Venkala-

swams Nasdu v. Venkatasubba Najdu. (1916) A I R 1916 Pat 278 (278) . 36 Ind Cas 533, Nint Lal Jha v. Kala-

nand Singh 20. (1900) 24 Mad 1 (13) : 2 Bom L R 771 : 27 Ind App 197 : 10 Mad L Jour 221 . 4 Cal W N 725 . 7 Sar 678 (P C), Venhata Subbamma Rao v. Venkatarama Rao

Note 51a

- 1. (1934) A I R 1934 P C 14 (16) · 61 Ind App 62 : 147 Ind Cas 823 : 55 All 993 (PC), Khalilur Rahman Khan v. Callector of Etah.
- (1915) A I R 1915 All 231 (232) : 28 Ind Cas 381, Ibrahimji v. Hasamuddin Khan.
 - (1882) 5 All 236 (237) . 1883 All W N 5, Hulasi v. Maiku.
- (1877) 1 All 580 (582) (F B), Fakir Mahammad v. Gulam Hussain.
- (1897) 22 Bom 722 (725), Trumbak Bapun v. Kashmath Vidyadhar.
- (1899) 1 Bom L B 84 (86), Krishna v. Vithal. (1874) 11 Bom H O R 111(116), Gobind Lakshuman v. Narayan Moreshvar.

Singh.

- (1805) 1805 Bom P J 129, Mancha Kasan v. Amtha Hira.
- (1920) A I R 1920 Cal 22 (24) . 54 Ind Cas 1, Krishna Prasad v. Dhirendra Nath.
- (1880) 7 Cal L R 424 (427, 428), Joobraj Singh v. Buhooria Alumbaseb
- Koer. (1977) 1 Cal L. R. 252 (258), Giri Dhais Singh v. Ram Kishore Narain
- (1897) 1 Cal W N 260 (262), Sarat Kumar Dass v. Jagat Chandra Roy. (1876) 25 Suth W R 91 (94), Abdool Hehim v. Shaikh Ascentoollah.

This was considered to be harsh,2 and the clause was amended so as to make time run from the date of the final order on the application. As to the retrospective effect of the amendment, see the undermentioned case.22

In order that the clause may apply, the following conditions are necessary

- 1. the application must be one for execution or to take a step-in-aid of execution.
 - 2, the application must be in accordance with the law.
 - 3, the application must be made to the proper Court :
 - 4, there must be a final order on the application.3

The clause will apply only where there has been an application. Hence, where no application has been made to any Court but there has been simply a payment made to the decree-holder out of Court, there is nothing to attract the operation of this clause

```
(1876) 25 Suth W R 546 (517), Rajah Nilmony Singh Deo Bahadoor 1.
```

- Nilconul Tuppadar (1875) 23 Suth W R 282 (282), Fanz Bakhsh Chowdhry & Sadut Als Khan. (1874) 22 Suth W R 512 (515) 14 Beng L R 143 (F B), Eshan Chander
- Bose v. Prannath Nag
- (1874) 21 Suth W R 147 (147, 148), Hunhur Singh v. Madho Lall
- (1881) 5 Ind Jur 72 (72), Tepparayudu v. Thaiharyya. (1894) 1894 Pun Re No. 89, Sardar v. Fatteh Chand.
- (1894) 1894 Pun Re No. 106, Ghulam Jelans v. Yusuf Shah,
- (1882) 1882 Pun Re No 151, Mt. Ans Bibs v. Gauda Mal.
- (1926) A I R 1926 Mad 1178 (1180) 50 Mad 49 98 Ind Cas 156 Erishna Pattar v. Seetharama Pattar.
- (1923) A I R 1923 Mad 686 (687) 75 Ind Cas 489, Parthasacaths Chetts v. Abdul Rahiman
- (1920) A I R 1920 Mad 86 (87) 58 Ind Cas 536, Rangachastar v Subramania Chetty
- (1881) 7 Mrd 80 (82), Sabhanatha v Lahshint
- (1931) 1931 Mad W N 413 (414), Raghara Ayyangar . Natesan Chelliar.
- (1875) 8 Mad H C R 97 (98), Naranappa Ayan v. Nanna Ammal, (1875) 8 Mad H C R 105 (107), Mahalalshme Ammal v. Lalshme Ammal
- (1932) A I R 1932 Oudh 148 (149) 7 Luck 500 137 Ind Cas 768 (T B), Ram Bharose v Ramman Lal
- (1924) A I R 1924 Pat 576 (578) S Pat 596 78 Ind Cas 766, Mt Bhagwanta Kuer v Zamir Ahmad.
- (1929) A 1 R 1929 Ring 152 (153) 117 Ind Cas 578 7 Ring 132, Somasundaram Chettiar v. Ma Shue Thit
- (1912) 14 Ind Cis 335 (337) (Lab), Ram Das . Kanshi Ram
- (1912) 13 Ind Cas 189 (190) (Cil), Madan Mohan Day . Gangachandra Ray
- (1911) 9 Ind Cas 213 (215) (Cal), Mochas Mandal & Mexeruddin Vollah (1909) 3 Ind Cas 336 (337) (Cal), Ray Behars Chahrasarts & Kalshar Gupta 2, (1914) A I R 1914 Mad 3-4 (3-5) 38 Mad 695 23 Ind Cas 533, Abdul
- Kadir Bouther v Arishna Malamal Naur Karnaran 2a(1930) A I R 1930 Put 207 (207) 127 Ind Cas 572, Sapans Paira v Damo-dar Kar (Where the decree is not time larred on 1st Jan 1928, the
- clause applies although the presions application was before that date) S. (1932) A I R 1932 Oudh 148 (149) 137 Ind Cas 768 7 Luck 500 (F B). Ram Bhorose v. Ramman Lal
 - (1936) A I R 1936 Rang 271 (272) 163 Ind Cas 403 14 Rang 530 Arrandas Bisumatal . U ha l'a
- 4. (1931) A 1 R 1931 Oudh 356 (357) 132 Ind Cas 7% 7 Luck 24. Mata Deen v. Mt. Kausilla See al o Noto 121 infra.

Article 182 (Clause 5) Notes 51a-52 Similarly, a suit to set aside an adverse order against the decreeholder in a claim case cannot eave limitation under this clause.⁵

52. "Application in accordance with law."—The word "law" in the expression "application in accordance with law" means not only the law to be found in the Code of Civil Procedure, but the whole body of law in general applicable to such application."

and an omission to conform to any of the requirements of the law in regard to the particular application may, in one sense, be said to render the application not one in accordance with law. This however is not the view adopted by the generality of decisions. An examination of the cases showe that in order that an application may be considered to be in accordance with law, two elements must exist—

- 1, the application must be one asking the Court to do something which, by law, that Court is competent to do; and
- apart from the question of competency of the Court to grant the relief claimed, it must be possible for the Court, on the particulars furnished by the applicant in his application, to proceed to grant the relief claimed.

 Competency to grant relief. The leading case on the point is Chattar v. Navai Singh,² where the High Court of Allahabad observed as follows.

"I think the term "applying in accordance with law" must mean applying to the Court to do something in execution which, by law, that Court is competent to do. I do not think that it means applying to the Court to do something which, either to the decree-holder's direct knowledge in fact or from his presumed knowledge of the law, he must have known the Court was incompetent to do."

This view has been followed in numerous cases. An executing Court, for instance, is not competent to grant a relief not granted by

5 (1889) 17 Cal 268 (271), Haghunandan Pershad v. Bhugoo Lall. [But see (1923) A I R 1923 Oudh 9 (12): 69 Ind Cas 660: 26 Oudh

Cas 71, Sheo Ram v. Ram Barosey. (Submitted not correct))

Note 52
1. (1937) A I R 1937 Pat 522 (523). 171 Ind Cas 99, Ferm Johar Mal Paran Ram v. Birdesuari Prasad Singh.

(1923) A I R 1923 Oudh 9 (13): 26 Oudh Cas 71: 69 Ind Cas 660, Sheo Ram v. Ram Bharosey.

[See also (1890) 13 All 211 (213) : 1890 All W N 290, Banss v. Sibree Mal.]

2, (1889) 12 All 64 (65) : 1889 All W N 200,

y grant the

der applies for application so

made for execution is not one in accordance with law massmuch as the Conrt is not competent to grant the relief prayed for by virtue of the decree.)

(1939) A I R 1939 All 57 (58): 180 Ind Cas 403 · I L R (1939) All 97, Sila Ram Ray v. Madho Prasad.

Article 182 (Clause 5) Note 52

the decree or which is prohibited by law. Thus, Section 28 of the Provincial Insolvency Act prohibits any proceeding being taken against a person who has been adjudicated an insolvent, except with the leave of the Court. Similarly, under Section 58 of the Civil Procedure Code, a judgment debtor who has once been arrested in execution of a decree and released from detention under that Section. cannot be re-arrested in execution of the same decree. Again, Section 3 of the Limitation Act provides that every application made after the expiry of the period of limitation prescribed therefor shall be dismissed. An application for a relief not cranted by the decree (see Note 53), or which is barred by limitation (see Note 55), or for the ro-arrest of the judgment-debter who has been released from detention under Section 58 of the Civil Procedure Code (see Note 54). or against an adjudicated insolvent without the leave of the Court (see Note 54), cannot therefore be considered to be one in accord. ance with law within the meaning of this Article. See also the undermentioned case 33

2. Relief not possible to be granted for want of particulars. It is obvious that, in order that the Court may act upon an application

(1906) 28 All 387 (389) 3 All L Jour 143 1906 All W N 54, Langtu Pands v. Basjnath Saran Pands.

(1905) 1 Nag L R 61 (63), Khet Singh v. Onlar Seth.

[1931] A I R 1931 Pat 274 (275): 10 Pat 183 . 131 Ind Cas 815, Durga Praxad Sahu v. Mt. Poudhara Kuer. (Relef, though granted by decree, could not be given owing to subsequent orders)

(1922) A I R 1922 Pat 183 (191): 67 Ind Cas 538: 1 Pat 651, Amrit Lal v. Murlidhar.

(1926) A IR 1926 All 345 (315, 346) 93 Ind Cas 292, Ramraj v Mt.
Umraj: (Application to Court without juri-diction is not one in
secondance with law)

(1016) A I R 1016 Mad 728 (790) ** O I ud Cas 707 ** 39 Mad 923, "Faradaraja Muddit v Murugeasus Pillas (An application made to a Court hywne no pursidation will to tracted as waster paper, and such an application to such a Court is also of no value in the eye of I w? 1 (1926) A I R 1926 All 95 (100) 48 All 468 99 Ind Cas 393, Stee Pranad v.

Mt. Narams Bas (Do)
Chandra Kanta.

id. N 132. Munawar

(1918) A I R 1918 Pom 236 (237) 46 Ind Cas 56 , 42 Pom 420, Janardan Gotind v Narayan Krishnaji.

(1906) 33 Cal 867 (871) 4 Cal L Jour 141. Purna Chandra Mardal v Radha Nath Das.

(1909) 1 Ind Cas 57 (59) (Cal), Manorath Das v. Ambica Kanta Bese.

[See also (1881) 4 All St (35) 1881 All W N 123, Muhammad Uniar v. Kamila Bibi,

(1922) A I R 1922 Cal 44 (45) 61 Ind Cas 571, Sadaya Chardra Jana v. Paresh Nath Ghose]

[But see (1925) A.I.R. 1925 Ondh 77 (78) 79 Ind Cas 880. Endra Pratab Singh a Sheo Prasad (Application for relief that could not be granted by the Court under the tota rid, telest that they could be granted held ore in see relance with law).

Sa. (1885) 10 Form 91 (93), Chatur Khushalchard v. Mahadu (An application forbidden by Section 22 of the Pekkhan Agriculturi-is' Rehei Act.)

Article 152 (Clause 5) Note 52 for relief, sufficient particulars must be stated therein to enable it to do so. Otherwise, it cannot be said to ho in accordance with law.

In the case of applications for execution, Order 21 Rules 11 to 13 of the Civil Procedure Code specify the manner in which such applications should he made, the particulars necessary to be stated and the documents that should accompany the application. But it is not every omission to comply with the said Rules that will disable the Court from proceeding with the execution. The omission to give, for example, the number of the suit or the date of the decree as required by clauses (a) and (c) of sub-rule 2 of Order 21 Rule 11, will not disable the Court from proceeding with the execution of the decree. On the other hand, the omission to give, as required by Rule 13 of Order 21, a description of the property sought to be attached, or the omission to state the mode in which the assistance of the Court is sought, as required by clause (j) of Order 21 Rule 11 sub-rule 2, may make it impossible for the Court to proceed to execute the decree.

In the latter case, clearly, the application cannot be considered to he one in accordance with law. In the former case, that is, where the omission consists of particulars which are required to be given by Order 21 Rules 11 to 13, but which do not prevent the Court from proceeding with the application, there is a difference of opinion among the High Courts. In Gopal Sah v. Janki Koer, Mr. Justice Prinsep observed as follows:

"It was not an application in accordance with law, because it did not fulfil the requirements of the law. No Court can do otherwise than determine that fact. To find that what the law requires on matters of form need not be compiled with to make an application one in accordance with law, seems to me to allow a transgression of the law and yet to find that it has been compiled with."

This view has however not been shared in the generality of cases. The test generally applied is, 'Could the Court have proceeded with the execution notwithstanding the defect?' If it could, then the application can be considered to be one in accordance with law, but not otherwise.' In Planmber Jana v. Damodar Gachait,' Mr. Justice Suhraward volserved as follows:

^{4 (1918)} A I R 1918 Mad 1090 (1093) : 40 Mad 949 : 38 Ind Cas 136, Nalesa

Pillas v. Ganapathia Pillas.
(1938) A I R 1938 Pat 75 (75): 174 Ind Cas 355, Lachmi Prasad v. Kapil Deo Ojah.

⁽¹⁹³¹⁾ A 1 R 1931 Nag 154 (155, 156) : 28 Nag L R 7 : 134 Ind Cas 681 (FE), Gulamais v. Rajhumar Chatterjs.

^{5. (1895) 23} Cal 217 (223).

^{5. (1895) 23} Cal 217 (223). 6. (1934) A I R 1934 Bom 307 (310) - 153 Ind Cas 273 : 59 Bom 1, Ramgopal Shrsram v Ramgopal Bhutada.

⁽¹⁹³⁷⁾ A 1 R 1937 Ondh 233 (235): 167 Ind Cas 34: 13 Luck 162, Chandila v. Kamla Prasad.

See also Notes 53 to 72, unfra.
7 (1926) A 1 R 1926 Cal 1077 (1081) . 53 Cal 661 : 98 Ind Cas 166. (20 Cal 989 and 16 Mad 142, Rehed on)

"The conclusion at which I have arrived is that the expression "in accordance with law" in Article 182 clause 5 should be taken to mean that the application though defective in some particulars was such upon which execution could be issued. If the omissions were such as to make it impossible for the Court to issue execution upon it, as was the case in Asgarati v. Troitokyanath Ghoss's where the list of the properties to be attached and sold was not supplied with the application for execution, it should be held that such an application is not in accordance with law. But where the application is such as to enable the Court to take further steps in execution, it cannot generally be said that such an application, if not defective in material and substantial matters, is an application not in accordance with law."

It would follow from the above discussion that the applicability of the test referred to above for seeing whether an application is or is not in accordance with law has to be determined with reference to the facts and circumstances of each case. It is, however, necessary to romember that the question whether an application is in accordance with law must be determined with regard to what the law requires to be done at the time the application is made. It is not permissible to consider what the law requires to be done after the application is made. On any and a valid application which is in accordance with law at the time it is made cannot be invalidated by any subsequent act of default by the decree-holder.

8, (1890) 17 Cal 637 (639) (F B).

9 (1898) 25 Cal 591 (597) 2 Cal W N 556 (F B), Gopal Chunder Manna v. Gosam Das Kalau

(1926) A I R 1926 Cal 1077 (1980) 53 Cal 661 98 Ind Cas 166, Pstambar Jana v Damodar Gachast

(1934) A I R 1934 Hom 807 (310) 153 Ind Cas 273 59 Bom 1, Ramgopal Shriram v Ramgopal Bhutada

(1919) A I R 1919 Lah 95 (96) 49 Ind Cas 982, Kanji Mai v. Kidar Nath (1933) A I R 1933 Sind 341 (343) 27 Sind L R 344 147 Ind Cas 470, Dev.

raf Multans Sahas v Fatch Chand Ram Chand (1922) A I R 1922 Sind 29 (30) 65 Ind Cas 14 15 Sind L R 156, Suhi tram

Tahilram v. Touer (1925) A I R 1925 Oudh 399 (400) 66 Ind Cas 591 28 Oudh Cas 892, Durga

Prasad Singh v Johkoo Ram 10. (1918) A I R 1918 Pat 517 (548) 47 Ind Can 993, Arjun Nail v Lalhan, 12 Mad 557 and A I R 1918 All 242, Followed)

(1920) AIR 1920 Cil 172 (172) 55 Ind Cis 231, Aptapuddin Ahmed v Jogendra Naraui Tewari.

11. (1985) A IR 1935 Pat 518 (514) 178 Ind Cas 621, Kameshwar Prasad Singh v Lalu Hal (Pallure of decree holder to get mistake in certificate of non-situ-fuction of decree certested)

(1935) A I R 1935 Nag 1 (2) 153 Ind C1s 955 31 Nag L R 126, Pilwasao v. Mt. Khairunnissi (Failure to file succession certificate.)

(1927) A I R 1917 Pat 374 (525) 6 Pat 440 101 Ind Cas 218, Mt Anha Bib v. Mahabir Prasad) (Pailure to produce succession certificate.)

(1937) A I R 1937 Oudh 283 (235) 167 Ind Cas St. 13 Luck 162, Chandita v Kamla Prasad (Omeson to produce copus endered to be produced under Rules 187 and 188, Oudh Crull Rules.)

(1893) 16 All 26 (28) 1893 All W N 197, Mangal Khan v Salim ullah Khan (Application unaccompanied by succession certificate)

Article 182 (Clause 5) Notes 52-53

- It is also to be remembered that the determination of the question whether an application is in accordance with law does not. in any way, depend upon the result of the application on the morits.12
- 53. Application for relief not granted by decree.- Execution implies the activity of Courts in assisting the decree-holder to realize the fruits of his decree. Where, therefore, the docree does not grant a particular relief, the executing Court is not competent to grant it. An application praying for a relief not granted by the decree is therefore one not in accordance with law. In Bando Krishna Kanbargi v. Narsınha Konher, Mr. Justice Chandavarkar observed:

"If the person entitled applies for execution in a mode and for a relief outside the decree, the application is not in accordance with law, for the plain reason that the decree of which the execution is sought is not in reality the decree to which the application professes to relate, but some other decree, one not existing, and therefore, incapable of execution according to law. The decree in such a case not existing, the application made as to it shares its fate and is treated as non-existent."

- In Ramakrishna Kadirvelusami v. Eastern Development Corporation, where in a suit on a mortgage there was a decree
 - (1893) 1893 Pun Re No 54, Sobba Singh v. Fatta (Execution application by heir of deceased decree-holder unaccompanied by a succession certi
 - ficate.) (1020) A I R 1920 Cal 172 (172): 55 Ind Cas 231, Aftapuddin Ahmed v. Josendra Naram Tewars.

(See also (1932) A I R 1932 All 484 (484): 139 Ind Cas 201, Dambar Lal v Chand Mal. 12. (1927) 52 Mad L Jour 1 (2) (R 1 C) Critical Note on 53 Cal 664 : A I R 1925

Cal 1077 : 98 Ind Cas 166, Pitambar Jana v. Damodar Gachait. (Result of application is not the test.)

(1897) 24 Cal 778 (783) . 1 Cal W N 676, Adhar Chandra Dass v. Lal Mohun Das.

(1912) 17 I. C 210 (213): 37 Bom 42, Bando Krishna v. Narsinha Konher. (1937) A I R 1937 Oudh 293 (235): 167 Ind Cas 34: 13 Luck 162, Chandika v. Kamla Prasad.

(1926) A I R 1926 Oudh 616 (617) : 98 Ind Cas 33 : 1 Luck 509, Gobardhan Dass v. Jang Bahadur. (1922) A I R 1922 Pat 597 (597): 1 Pat 609: 69 Ind Cas 663, Gobardhan

Das Dwarka Prasad v. Satischandra Rai. (1909) 4 Ind Cas 1154 (1155) : 3 Sind L R 171, People's Bank of India v.

Mahomed Ali

(1926) A I R 1926 Pat 160 (161) · 90 Ind Cas 817, Jogendra Prasad Narayan Sinha v Mangal Prasad Sahu.

Note 53

 (1888) 13 Bom 237 (239), Pandharinath Bapuji v. Lilachand Halibhai. (1909) 4 Ind Cas 1154 (1155, 1156), . 3 Sind L R 171, People's Bank of in accordance with law.

W R No.95, Ganga Ram

v. Mr. Daron (See also (1899) 1 Bom L R 84 (86), Krishna v. Vithal]

2. (1912) 17 Ind Cas 210 (212) : 87 Bom 42.

3. (1918) A I R 1918 Mad 396 (397) : 43 Ind Cas 537.

Article 152

(Clause 5)

Notes 53-54

against the mortgaged property but no personal decree against the mortgager, and the decree-holder filed an application for the attach, ment and sale of non-mortgaged properties of the mortgager, the High Court of Madras held that the application was not one in accordance with law. Their Lordships observed:

"Under the Limitation Act, the application must be one to execute a decree; but, if that decree is non-existent, there can be no application in accordance with law. We are unable to hold that the nature of the relief is immaterial so long as the tabular form is properly filled up."

See also the undermentioned cases.3a

A contrary view, namely, that an application even for a relief not granted by the decree may be one in accordance with law, has been held in the undermentioned case. It is submitted that this view is not correct.

Where some of the reliefs claimed in the application are granted by the decree, and some not, the application in so far as the former reliefs are concerned, would be in accordance with law, though as to the latter it would not be as.⁵

54. Application against person against whom execution could not issue. — An application for execution in a particular mode against a person who cannot, in law, he so proceeded against, cannot, as has been seen in Note 52 ante, he considered to be one in accordance with law. Thus, an application for execution sgainst a discharged insolvent judgment-debtor, or an application for execution against an adjudicated insolvent without the leave of the Court, is not one in accordance with law. Similarly, an application for execution against a judgment-debtor who is dead on the date of the application; or for the re-arrest of a judgment-debtor who

⁸a (1905) 27 All 619 (621) 2 All L Jour 876 : 1905 All W N 132, Munawar Husain v. Jans Bijas Shankar.

^{(1901) 1901} Pun Re No. 99, Srs Ram v. Manuddin.

 ⁽¹⁹¹⁷⁾ A I R 1917 Mad 628 (629) * S5 Ind Cas 614, Ramchandra Naidu y. Tirupathi Naidu.

 ^{(1913) 17} Ind Cas 210 (212) . ST Bom 42. Banda Krishna v. Narasimha Konher.

 ⁽¹⁹²⁴⁾ AIR 1924 Bom 180 (181) 77 Ind Cas 747, Ghanshamdas Ballerishna. das v Motichand Horakchand.

⁽¹⁹³⁹⁾ A I R 1939 Mad 195 (196), Nagaratnam Pellas v Ramasuams Iyer.
2. (1939) A I R 1939 Mad 195 (196), Nagaratnam Pellas v. Ramasuams Iyer.

⁽¹⁹³⁶⁾ A I R 1936 Mad 284 (286) 59 Mad 759 162 Ind Cas 376, Jagdison Pillar v Karayanan Chelhar. (An execution petition filed after the institution of insolvency proceedings without the leave of Insolvency Court cannot be said to be an application in accordance with law)

^{3.} See Note 85 infra.

⁽¹⁹³⁴⁾ A I R 1934 All 463 (464) 56 All 463 448 Ind Cas 1131, Earthalt v. Bir Bhadarman Tewars

⁽¹⁹³⁴⁾ A I R 1934 Pem 215 (216): 153 Ind Cas 181, Manjulator Kash: Nath v. Pandurang Japaram.

^{(1903) 13} Mad L Jour 37 (37) (N B C).

Article 182 (Clause 5) Notes 54-55a

bas been already released from detention under Section 58 of the Code of Civil Procedure, is not one in accordance with law. But a judgment-debtor, who has been arrested and released pending insolvency proceedings under the provisions of the Insolvency Act. is not exempted from re-arrest after the obstruction is removed, and therefore an application for the re-arrest of the judgment-debtor under such circumstances cannot be said to be not one in accordance with law 5

55. Application barred by limitation. — As has been seen in Note 52, ante, 'law' means the whole body of law applicable to the particular application in question. An application for execution which is barred by limitation cannot be said to be in accordance with the provisions of the Limitation Act governing such applications and cannot therefore he considered to be one in accordance with law.'1 In Neelmoney Singh v. Ramjeebun,2 their Lordships of the Calcutta High Court observed as follows .

"The application mentioned as a starting point for a period of limitation in Article 179 clause 4 of Schedule II of the Limitation Act of 1877, must be an application in accordance with law.' In this case the application of 16th Fsbruary 1877, from which it is contended that the period should be computed, was not 'in accordance with law,' as it was made after the period prescribed by the law then in force. It cannot therefore constitute a fresh starting point for limitation."

55a. Application in respect of person or property outside inrisdiction. - A, a decree holder, applied for execution against B, the judgment-debtor, and stated in his application that B was residing within the jurisdiction of the Court and had also moveable property within such jurisdiction. This was found to be untrue and the application was dismissed. It was held that the application could not, by reason only of the said facts, he considered as not in accordance with law.1 The Court observed as follows:

(1897) 7 Mad L Jone 840 (840) (N I C), Critical Nots on 19 All 837, Madho Prasad v Kesho Prasad

(1897) 19 All 837 (839) 1697 All W N 75, Madho Prasad v. Kesho Prasad. [But see (1893) 17 Mad 76 (78): 4 Mad L Jour 8, Samia Pillai v. Chockalinga Chettiar. (Following 6 Mad 250 and 10 Cal 541.) (1933) A I R 1933 Cal 684 (687): 149 Ind Cas 1024, Abdus Sattar v.

Mohana Mohan Das 1 4. (1889) 12 All 64 (65) : 1869 All W N 200, Chattar v. Newal Singh. 5, (1910) e Ind Cas 743 (745) . 33 All 279, Suraj Din v. Mahabir Prasad. (25 Bom 652, Followed, 12 Cal 652, Not followed.)

Note 55

. . . C.rkheel.

: 69 Ind

2. (1881) 8 Cal L R 335 (336).

Note 55a

1. (1988) A I R 1933 Sind 7e (81) : 142 Iod Cas 489 : 27 Sind L R 109, Achrajsing Ramsing v. Achragram Sahni. (6 Cal 513, Followed.)

Article 182 (Clause 5) Notes 55a-55b

"Assuming for a moment that the averment that the judgment-debtor was in Karachi and had moveable property in his possession in Karachi was not true, still the Court was not asked to do that which it was not competent to do. The Court was asked to attach property within its pursasherion, which it was perfectly competent to the Court to order. If it had been proved by the judgment-debtor to the satisfaction of the Court that there was, as a matter of fact, no property within its jurisdiction to be attached, the applicant would not have been able to secure effective execution of his decree. But that would not vitiate the validity or legality of the application for execution as such. An application is what the applicant asks the Court to do; not what it might turn out to he in the light of the evidence recorded subsequently in connexion with another matter."

Where an application for the attachment of property bona fide between to belong to the judgment-debtor was made, it was held that the fact that, on inquiry it turned out that the property did not belong to the judgment-debtor, will not render the application not one in accordance with law ³

55b. Application for transfer of decree to non-existent Court or to Gourt without jurisdiction.—An application to Court A for the transfer of a decree to Court B which has no jurisdiction to execute such decree is not an application in accordance with law.\(^1\)
The reason is that a Court is not competent to transfer a decree to another Court which has no jurisdiction to execute the decree, and that an application to a Court to do that which it is not competent to do is not one in accordance with law According to the High Court of Madias, these cases must be distinguished from a case where a Court is asked to transfer a decree for execution to a Court which does not cast at all, and the application in the latter case would be one in accordance with law \(^2\). Their Lordships observed as follows.

"This is not, we think, the same as applying for transmission to a Court which does not exist but which the petitioner wrongly believes to exist. That is a mixtake of fact in our opinion There is no ground for holding that the decree holder was applying for transmission of its decrees for execution to a Court without pure-detion to execute them. It is not disputed on behalf of the appellants that the decree-holder

Note 55h

^{2. (1895) 1895} Pun Re No. G. Prabh Singh v. Bal Kishen

^{1. (1939)} A I R 1939 Atl 57 (5-) I L R 1939 All 97 1-0 Ind Cas 403 Sita Barr

Rany Madho Pravid (1922) A I R 1932 Pat 193 (192) 1 Pat 651 67 Ind Cas 538, Ameri Lal v. Murlidhar.

⁽¹⁹³²⁾ A I R 1932 Pat 309 (310) 11 Pat 785 142 Ini Cas 155 Still Prasad Shukul v. Ba'n Lai Shukul

^{2. (1939) 1939} Mad W N 11 (12), Shanth appa v. Estear appa.

Article 182 (Clause 5) Notes 55b-56 wanted his decrees to he transferred to the Bellary District. so that they could be executed. He wanted them to be transferred to a Court with jurisdiction to oxecute them. The sole mistake which he made was not a mistake of law but a mistake in the description of the Court to which he requested that his decrees might be transferred."

It is difficult to see, however, how the knowledge of the decreeholder or his belief would affect the question whether the application was or was not one in accordance with law.

56. Unstamped applications and applications without the payment of court-fees necessary.—It has been held by the High Court of Madras in Ramasuami Ayyan v. Sesha Alyangar, that the affixing of an insufficient stamp on the application for execution did not render the application illegal and that it would, consequently, give a fresh starting point of limitation. In Krishnayar a, Sriramului, the same High Court held that an unstamped execution application was not necessarily one not in accordance with law, Neither of these decisions made any reference to the provisions of Section 25 of the Court-fees Act, 1870, which enacts that no document which ought to bear a stamp under the Act shall be of any validity unless and until it is properly stamped.

Where a decree for partition provided that the plaintiff was not entitled to execute the decree unless he paid the full court-fee on the claim made hy him in his suit, and the plaintiff applied for execution without making any such payment, it was held by the High Court of Bombay that the application could not be said to be one not in accordance with law by reason of such non-payment.³ The Court observed:

"It was within the competence of the Court to order partition on court-fee being paid as directed by the decree . . . Upon the plaintiff's application it was competent for the Court to order that the execution should begin on court-fee being paid within a certain date."

This view has heen dissented from by the Court of the Judicial Commissioner of Sind.* In that ease a decree was passed in a snit falliog under Section 11 of the Court.fees Act, 1870, for a larger amount than was claimed in the plaint, and without paying the extracourt.fee as required by that Section, the plaintiff applied for excention. It was held that the application was not one in accordance with law, the reason given being that since it was not the duty of any Court to execute the decree where the deficit court.fee was not paid,

Note 56

I. (1883) 6 Mad 181 (182).

 ⁽¹⁹²⁸⁾ A I R 1928 Med 142 (142): 106 Ind Cas 485
 (1999) 5 Ind Oas 601 (602): 34 Bom 189, Nathu Bai Kursandas v. Franjitan Lalchand.

^{4. (1937)} A I R 1937 Sind 103 (110): 31 Sind I. R 14: 170 Ind Cas 493, Lakhmi Chand Ghandamal v. Firm Gokaldas Ranchordas.

the application could not be said to have been made to the proper Court at all as explained in Explanation II of the Article.

57. Application for relief in mode not permitted by law .-An application for a relief, even though granted by the decree, in a mode which the law does not permit, cannot be said to be one in accordance with law.1 Thus, where the decree itself directed the sale of the property in suit, and the application was for the attachment of the said property, the High Court of Madras2 observed :

"An application for attachment of certain property cannot be treated as an application to execute a decree which directs the sale of that property. As pointed out in Josemana Dassi v. Thackomoni Dassi,3 the properties attached being mortgaged properties could not be brought to sale under the attachment. and the attachment must therefore be treated as ineffective and infractuous."

An application for execution against the legal representatives of the deceased undement debtor, by arresting and imprisoning them. has been beld to be not one in accordance with law, on the ground that the local representatives are not hable to be arrested and imprisoned for debts due by the deceased judgment-debtor.4

55. Application in respect of decree incapable of execution. -It was held in the undermentioned case! that an application for execution of a deerce at a time when it is incarable of execution cannot be considered to be one in accordance with law. The decree in that case was one falling under Section 11, Court-fees Act, and was held incapable of execution until the additional court-fee was paid. This latter view has not been followed in other cases (see Note 56 ante).

58a. Application for execution of conditional decree without performing condition. - It has been seen in Note 32 ante, that there is a conflict of opinion on the question whether a decree on condition that the plaintiff decree-holder should before execution pay a certain sum of money, is a decree that is immediately capable of execution. According to the High Courts which have taken the view that the decree is immediately capable of execution, an application for execution of such decree without performing the condition

Note 57

3. (1896) 24 Cal 473 (480)

4. (1909) 4 Ind Cas 958 (959) (Lah), Raschand v Jhande Khan

[See also (1937) A I R 1937 Pat 522 (523) 171 Ind Cas 99, Firm Johar Mai-Paran Ram v Bindeswars Frant (Decree not binding on sons-Application for arrest of sons]]

Note 53

(1937) A I R 1937 Sind 108 (IIO) 31 Sind L R 14 170 Ind Cas 423, Lathmichand Ghandarial v. Firm Golaldas Rarcherdas.

Article 162 (Clause 5) Notes 66-58a

Article 182 (Clause 5) Notes 58a-59

:

cannot be said to be not in accordance with law by reason of the non-performance of the condition.1

59. Application not accompanied by certificate required by law .- It was held in Manchar v. Gebiappa, that an application for execution not accompanied by the Conciliator's certificate as required by the Dekkhan Agriculturiste' Relief Act. 1879, was not one in accordance with law. This view has however been dissented from in a later case of the same High Court and it has been held that such an application, if it is otherwise in accordance with law, does not become one not in accordance with law by reason of the fact that the certificate does not accompany it.2

Section 29 E of the Bombay Gujarat Talukhdars' Act, 1888, provides that on the publication of a notice under Section 29B, no proceeding in execution shall be instituted or continued until the decree-holder files a certificate from the managing officer that the decree claim has been duly submitted or until the expiration of a specified period. In Hargovind v. Naja Sura,3 it was beld that an application not accompanied by such a certificate was nevertheless one in accordance with law. A contrary view was expressed by Mr. Justice Marten in the same case. In the undermentioned case. the Sind Judicial Commissioner's Court expressed its preference to Mr. Justice Marten's view.

The failure to produce a succession certificate along with an application for execution made by the legal representatives of a deceased decree-bolder will not, according to the cases noted below, render the application not one in accordance with law, the reason heing that the Court was in such cases not prohibited from entertaining the application, but only from proceeding with the execution of the decree.

Note 58a

rier. hamatbi. ajagopala

(1935) A I R 1935 Pesh 129 (130) . 153 Ind Cas 517, Budhu Ram v. Mushtaq Shah.

- 1. (1881) 6 Bom \$1 (32).
- 2. (1915) A I R 1915 Bom 46 (47) . 28 Ind Cas 493, Sadashiv Venkaji v. Narsing Rag
- S. (1918) A I R 1918 Bom 73 (75, 76) . 47 Ind Cas 726 . 43 Bom 44.
- 4 (1937) A I R 1937 Sind 108 (110): 31 Sind L R 14: 170 1nd Cas 493, Lakhmichand Ghandamal v Firm Gokaldas Ranchordas.
- 5. (1891) 20 Bom 76 (78), Balkishan Shiwa Balas v. B'agarsing. (1935) A I R 1935 Nag 1 (2) 153 Ind Cas 955; 81 Nag L R 126, Pilicasao
 - v Mt Khairunnissa. (1927) A I R 1927 Pat 321 (325) : 6 Pat 440 : 104 Ind Cas 218, Mt. E.bi Aisha v. Mahabir Prasad.
 - (1893) 1893 Pnn Re No 54, Solba Singh v. Fatta.

60. Omission to sign or verify application. - Sub-rule 2 of Rule 11. Order 21. Civil Procedure Code, requires that every application for execution should be signed and verified by the applicant or by some other person proved to the satisfaction of the Court to he acquainted with the facts of the case. An omission to verify the application is only an immaterial defect which will not vitiate the application 1 There is a difference of opinion as to whether an omission by the decree-holder to sign the application is a material defect vitiating the application. In the undermentioned cases' an application neither signed nor verified by the decree-holder but which was signed by his vakil who, however, did not profess to be acquainted with the facts of the case, was held to be not in accordance with law. Where an application was signed only by the pleader of the party and he was acquainted with the facts of the case, it was held that the application was not vitiated.3 An application presented by a Mooktear on behalf of all the judgment-creditors, one of whom had signed it, the names of the rest having been appended thereto hy the Mooktear, was held by the Calcutta High Court to be one on behalf of all the judgment ereditors, especially where no objection to the form of the application was taken by the Court at its presentation.4

Where an application was made by the mother as guardian of the minor decree-holder when he was really a major, it was held by the Higb Court of Madras that the application was not one in accordance with law.

61. Error in description of sult and names of parties. — Order 21 Rule 11, sub-rule 2 clauses (a) and (b) of the Code of Cival Procedure require a statement of the number of the suit and the names of the parties. But an omission to state these, or an error in stating them, does not render the application invalid.¹

Note 60

- (1906) 3 Cal L Jour 44 (44) (8 N), Jyot Kumar Mukerys v. Natabar Bose.
 (1936) A I R 1936 Pat 62 (63) 150 Ind Cas 491, Sheonath Prasad v Bengress Bank, Ltd.
 - (1924) A I R 1921 Pat 23 (24) 2 Pat 809 74 Ind Cas 174, Bhaguat Prasad Singh v Bwarka Prasad Singh (Ventication by one only of several applicants)
- 2 (1930) 195 Ind Cas 15 (15) (Mad), Sangiliya Pillas v Muthu Chettiar
- (1936) A I R 1936 All 17 (18) 159 1nd Cas 752, Raja Ram Gopal Sing v Harish Chandra Lal
 - (See also (1903) 26 All 19 (21) 1903 All W N 172, Kasumrs v Bens Prasad]
 - 3 (1929) A 1 R 1929 Bom 196 (196) 117 Ind Ca., \$26, Hassan Sakeb v. Ram. chandra Appays
 - (1903) 25 All 154 (155) 1903 All W N 209, Bakar Sajjad v Udit Narain Singh
 - 4. (1873) 4 Cal 605 (606), Auton Muster v Bidhoomoolhee Dabee
 - 5 (1905) 28 Mid 396 (398) 1 Mad L Tim 113, Saramma v Serbayya

Note 61

1 (1935) 42 Cal W. N. 842 (*43), Brintifan Behari Bose v. Menmetha Nath Duari. (Freution application etherwise currect, wrongly describing a suit to be a small cuse case.)

'Article 182 (Clause 5) Notes 58a-59 cannot be said to be not in accordance with law by reason of the non-performance of the condition.1

59. Application not accompanied by certificate required by law .- It was held in Manohar v. Gebiappa, that an application in execution not accompanied by the Conciliator's certificate as required by the Dekkhan Agriculturists' Relief Act, 1879, was not one m accordance with law. This view has however heen dissented from a a later case of the same High Court and it has been held that such an application, if it is otherwise in accordance with law, does not become one not in accordance with law by reason of the fact that the certificate does not accompany it.2

Section 29 E of the Bombay Guiarat Talukhdars' Act, 1888, provides that on the publication of a notice under Section 29B, m proceeding in execution shall be instituted or continued until the decree-holder files a certificate from the managing officer that the decree claim has been duly submitted or until the expiration of a specified period. In Hargovind v. Naja Sura,3 it was held that an application not accompanied by such a certificate was nevertheles ooe in accordance with law. A contrary view was expressed by Mr. Justice Marten in the same case. In the undermentioned ess. the Sind Judicial Commissioner's Court expressed its preference to Mr. Justico Marten's view.

The failure to produce a succession certificate along with as application for execution made by the legal representatives of deceased decree-holder will oot, according to the cases noted below, render the application not one in accordance with law, the reason being that the Court was in such cases not prohibited from entertaining the application, but only from proceeding with the execution of the decree.

(*****

Note 58a

ılai Chettiar v. Rajappier. 438, Mt. Bhurebe v. Rakamate Sarb Rawthen v. Pagagofals

(1935) A I R 1935 Pesh 129 (130) - 158 Ind Cas 517, Budhu Ram v. Mes^{1/2}7 Shah. Shah.

- 2 (1915) A I R 1915 Bom 46 (47) . 28 Ind Cas 493, Sadashiv Fenkaji 4 Nor-
- sing Rao. 3 (1918) A I R 1918 Bom 73 (75, 76) : 47 Ind Cas 726 : 43 Bom 44 4 (1937) A I R 1918 Bom 73 (75, 76): 47 Ind Cas 726: 43 Bom 44 (1937) A I R 1937 Sind 108 (110): 31 Sind L R 14: 170 Ind Cas 473, Let
- 126. Felwasio 5 (1891) 20 (1935) A : 218. M. E.
 - (1927) A Anna V. Mahabir Prasad.
 - al Khan V. Salim nilah Kisa (1893) 1899 P. D. W. F. C. Fatta. v. Brahmdeo.
 - Cal 755 (757) Ha 6-100 rath Das v. Ambi a Kania Bel. (1893) 20 Cal 755 (757), Hafizuddin Chowdhry v. Abdod And. (1892) 19 Cal 492 (484), Brojonath Surma v. Issuar Chamber D

Article 122 (Clares 5) Rotes 63-54

60, Omission to sign or verify application. - Sub-rule 2 of Rule 11, Order 21, Civil Procedure Code, requires that every application for execution should be signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. An omission to verify the application is only an immaterial defect which will not vitiate the application 1 There is a difference of opinion as to whether an omission by the decree-holder to sign the application is a material defect vitiating the application. In the undermentioned cases2 an application neither signed nor verified by the decree-holder but which was signed by his vakil who, however, did not profess to be acquainted with the facts of the case, was held to be not in accordance with law Where an application was signed only by the pleader of the party and he was acquainted with the facts of the case, it was held that the application was not vitiated 3 An application presented by a Mooktear on behalf of all the judgment-creditors, one of whom bad signed it, the names of the rest having been appended thereto by the Mooktear, was held by the Calcutta High Court to be one on hehalf of all the judgment-creditors, especially where no objection to the form of the application was taken by the Court at its presentation.4

Where an application was made by the mother as guardian of the minor decree-holder when he was really a major, it was held by the High Court of Madras that the application was not one in accordance with law.5

61, Error in description of suit and names of parties __ Order 21 Rule 11, sub-rule 2 clauses (a) and (b) of the Code of 2 Procedure require a statement of the number of the suit are names of the parties But an omission to state these, or an error stating them, does not render the application invalid.

Note 60

- 1. (1906) 8 Cal L Jour 44 (44) (S N), Jyot Kumar Mulerje v Natalar Lee. (1936) A I R 1936 Pat 62 (63) 159 Ind Cas 491, Sheonath Praisel v. Ing. res Bank, Ltd.
 - (1924) A I R 1921 Pat 23 (24) 2 Pat 809 74 Ind Cas 174, Bhaque' France Singh v Dwarks Prasad Singh (Verification by one only of applicants 1
- 2 (1930) 185 Ind Cas 15 (15) (Mad), Sangalaya Pallas v Muthu Chetter (1936) A I R 1936 All 17 (18) 153 Ind Cas 752, Baja Bam Gy 1 Harish Chandra Lat
 - (See also (1903) 26 All 19 (21) 1903 All W N 172, Easure, Prasad 1
- عري , براة (1929) A I R 1929 Bom 196 (196) 117 Ind Cas 526, Hassan 521, براة و 1929 كا chandra Appaya (1903) 20 All 154 (155) 1903 All W N 209, Bakar Sajjad v U.
- 4. (1873) 4 Cil 605 (606), Autoo Wisree v Bidhoomookhee Dalee
- 5 (1905) 28 Mad 896 (398) 1 Wad L Tim 113, Saramma . Seile

Note 61

1 (1938) 42 Cal W N 842 (848), Brandaban Behara Bose v. Mora-42 Cal W N 842 Pag, to manufacture extract, near 2 for Dwars. (Paccution application etherwise currect, near 2 for the Dwars.)

'Article 182 (Clause 5) Notes 58a-59

cannot be said to be not in accordance with law by reason of the non-performance of the condition.1

59. Application not accompanied by certificate required by law.—It was held in Manchar v. Gebiappa, that an application for execution not accompanied by the Concillator's certificate as required by the Dekkhan Agricultarists' Relief Act, 1879, was not one in accordance with law. This view has however been dissented from in a later case of the same High Court and it has been held that such an application, if it is otherwise in accordance with law, does not become one not in accordance with law by reason of the fact that the certificate does not accompany it.

Section 29E of the Bombay Gujarat Talukhdars' Act, 1888, provides that on the publication of a notice under Section 29B, no proceeding in excention shall be instituted or continued until the decree cholder files a certificate from the managing officer that the decree claim has been duly submitted or until the expiration of a specified period. In Harpovind v. Naja Sura, it was held that an application not accompanied by such a certificate was pretribeless one in accordance with law. A contrary view was expressed by Mr. Justice Marten in the same case. In the undermentioned case, the Sind Judicial Commissioner's Court expressed its preference to Mr. Justice Marten's view.

The failure to produce a succession certificate along with an application for execution made by the legal representatives of a deceased decree-holder will not, according to the cases noted below, render the application not one in accordance with law, the reason being that the Court was in such cases not prohibited from entertaining the application, but only from proceeding with the oxecution of the decree

	Note 58a			
1			·	la jappner. v. Rahamatbi. v. Rajagopala

(1935) A I R 1935 Pesh 129 (190) . 159 Ind Cas 517, Budhu Ram v. Mushtaq Shah.

- (1881) 6 Bom 31 (32).
 (1915) A I R 1915 Bom 46 (47) 20 Ind Cas 493, Sadashiv Venkaji v. Narsing Rao.
- 3 (1918) A I R 1918 Bom 73 (75, 76) : 47 Ind Cas 726 : 43 Bom 44.
 4 (1937) A I R 1937 Smd 103 (110) : 31 Smd L R 14 : 170 Ind Cas 493,
- Lakhmichand Ghandamal v Firm Gohaldas Ranchordas-5 (1891) 20 Bom 76 (78), Balkishan Shiwa Balas v. Waqaring.
- (1935) A I R 1935 Nag 1 (2) 153 Ind Cas 955 : 31 Nag L R 126, Pilwakio v. Mf Kharrunnissa (1927) A I R 1927 Pat 321 (325) 6 Pat 440 . 101 Ind Cas 218, Mt. Bibi
 - Aisha v. Mahabir Prasad. (1993) 1893 Pun Re No 54, Sobba Singh v. Fatta.
 - Bose.

Article 182 (Clause 5) Notes 60-61

60. Omission to sign or verify application. - Sub-rule 2 of Rule 11, Order 21, Civil Procedure Code, requires that every application for execution should be signed and verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case. An omission to verify the application is only an immaterial defect which will not vitiate the application 1 There is a difference of opinion as to whether an omission by the decree-holder to sign the application is a material defect vitiating the application. In the undermentioned cases2 an application neither signed nor verified by the decree-holder but which was signed by his valul who, however, did not profess to be acquainted with the facts of the case, was held to be not in accordance with law Where an application was signed only by the pleader of the party and be was acquainted with the facts of the case, it was held that the application was not vitiated 3 An application presented by a Mooktear on behalf of all the indement-creditors, one of whom had signed it, the names of the rest having been appended thereto by the Mooktear, was held by the Calcutta High Court to be one on behalf of all the rudement-creditors, especially where no objection to the form of the application was taken by the Court at its presentation.4

Where an application was made by the mother as guardian of the minor decree-holder when he was really a major, it was held by the High Court of Madras that the application was not one in accordance with law.

61. Error in desoription of suit and names of parties. -Order 21 Rule 11, sub-rule 2 clauses (a) and (b) of the Code of Civil Procedure require a statement of the number of the suit and the names of the parties But an omission to state these, or an error in stating them, does not render the application invalid.1

Note 60

- 1. (1906) 3 Cal L Jour 44 (44) (8 N), Just Kumar Mukerys v Natabar Boss. (1936) A I R 1936 Pat 62 (68) 159 Ind Cas 494, Sheonath Prasad v. Benares Bank, Ltd
 - (1924) A I R 1924 Pat 23 (24) 2 Pat 800 74 Ind Cas 174, Bhaqwat Prasad Singh v Dwarka Prasad Singh (Ventication by one only of several applicants)
- 2 (1930) 185 Ind Cas 15 (15) (Mad), Sangalana Pallas v. Muthu Chettar. (1936) A I R 1936 All 17 (18) 158 Ind Cas 752, Raja Ram Gonal Sing v.
 - Harish Chandra Lal [See also (1903) 26 All 19 (21) 1903 All W N 172, Easumes v Bens Prasad 1
- 3 (1929) A I R 1929 Bom 196 (196) 117 Ind Cas 526, Hassan Saheb v. Ram. chandra Appaya
- (1903) 26 All 154 (155) 1903 All W N 209, Bakar Sajjad v Udit Norgan Singh
- 4, (1878) 4 Cal 605 (600), Autoo Misree v Bidhoomookkee Dabee 5. (1905) 28 Mad 896 (898) 1 Mad L Tim 113, Saramma v Seshayya.

Note 61

1 (1938) 42 Cel W N 842 (843), Brandaban Behars Bose v. Monmotha Nath Dwart. (Execution application otherwise correct, wrongly describing a suit to be a small cause case)

Artiols 182 (Clauss 5) Notes 61-64

An omission to mention the names of persons interested in the decree will not make the application not one in accordance with law if it is otherwise in accordance with law.2

- 62. Omission to give, or error in dats of dscrss.—Order 21 Rule 11, suh-rula 2 clansa (c) of the Code of Civil Procedure requires the date of the decree to ha given. But the omission to give it or an error in giving it is not a material defect which will render the application invalid.1
- 63. Omission to state whether appeal has been preferred and its result. - Order 21 Ruls 11, sub-rule 2 clause (d) of the Code of Civil Procedura raquires that the application should state whether an appeal has been preferred from the decree. An omission to comply with this requirement does not render the application one not in accordance with law.1
- 64. Omission to state previous adjustments. Clause (c) of Order 21 Rule 11, sub-rule 2 of the Code of Civil Procedure requires that previous adjustments, if any, should be stated in the application. But an omission to comply with this is not a material omission which would vitiate the application, according to the High Courts of Madras, Calcutta1a and Lahore.2 According to the Judicial Commissioner's Court of Nagpur,3 if a decree holder deliberately omits to mention a certified adjustment, the application is not one in accordance with law.
 - (1898) 25 Cal 594 (597) : 2 Cal W N 556 (F B), Gopal Chunder Manna v. Gosain Das Kalay. (Omission to put the right number of sult.) (1997) A I R 1937 All 397 (398): 169 Ind Cas 225, Hafeer Uddin v. Ram

Chander Das.

(1930) A I R 1930 Mad 172 (178): 119 Ind Cas 596, Balambhatlu v. Bapanamma.

(1918) A I R 1918 All 289 (289): 43 Ind Cas 519, Ram Lakhan Das V. Shankar Singh. (Application for execution of the decree in which all the defendants were named, but the minor and his guardian who were both defendants were not described as such)

Masser, (Trivial mustake in writing name of party.) 2. (1931) A I R 1931 Lah 600 (601) : 135 Ind Cas 207, Ohanaya Lal v. Madho Parshad.

Note 62

1. (1918) A I R 1915 Pat 41 (51) : 48 Ind Cas 245 : 4 Pat L Jour 213, Keshwesarındra Sahı v. Debendra Bala Dassı. Note 63

1. (1933) A I R 1933 Mad 872 (874) : 147 Ind Oas 386, Palli Vettala Hedge v. Sheenappa Shetty. Note 64

1. (1919) A I R 1919 Mad 256 (236) : 51 Ind Cas 114, Marsmuthu Naicher v. Ramaswamu Padavachs. la (1934) A I R 1934 Cal 465 (466) : 151 Ind Cas 1015, Kangal Chandra v. Nan-

dalal. 2. (1919) A I R 1919 Lah 95 (96) : 49 Ind Cas 982, Kanji Mal v. Kaidarnath. 8. (1924) A I R 1924 Nag 185 (187) : 78 Ind Cas 291, Mt. Pira Bai v. Bhawani Prasad.

Artiole 162 (Clanse 6) Notes 66-6

65. Particulars of previnus applications not given. — Order 21 Rule 11, sub-rule 2 classe (f) of the Code of Crul Procedure provides that the application for execution should state whether any and, if any, what previous applications have been made for the execution of the decree, the dates of each applications and their results. It has been held that the omission to state particulars of all the previous applications except the immediately preceding one is not a material omission such as would render it not one in accordance with law.¹ But where particulars of the immediately previous application were omitted to be given, it was held in the undermentioned case² that the defect was a material one as, in the absence of such particulars, it was not possible to say whether the application was within the period of limitation.

Where in mentioning the particulars of the last prior application its date was wrongly given but the mistake did not affect the ments of the application, it was held that the defect was immaterial, especially if it was amended by the party though two days after the time granted by the Court 3

See also the undermentioned case.4

66, Omission to mention costs and interest.—Clauses (g) and (b) of Order 21 Rule 11 sub-rule 2 of the Code of Ordi Procedure require that the interest and costs swarded by the decree should be stated in the application for execution. An omission to state these is only an immaterial defect and will not invalidate an application. A courtary view has, however, heen taken in the undermentioned cases.⁸

67. Omission to state mode in which execution is songht. — An execution application which does not specify the manner in

Note 65

 (1920) A I R 1926 Cal 1146 (1147, 1148) 96 Ind Cas 554, Saudamini Ghose v. Jessoro Regulered Loan Co., Ltd. (1892) 16 Mad 142 (148), Rama v. Varada,

(1892) 1892 All W N 114 (114, 115), Madho Singh v. Ram Bharose Das.

 (1922) A I R 1922 Sind 29 (31) 15 Sind L R 156 65 Ind Cis 14, Sahijram Tahilram v. Tower

 (1901) 23 All 162 (163) 1901 All W N 31. Kalka Dube v. Bisheshar Patal.
 (1891) 1891 All W N 154 (155), Ashraf Begam v. Muhammad Safdar Ali Khan. (Misdescription of former records referred to in application is not material error.

Nnte 66

- (1928) A I R 1928 Mad 440 (444) 112 Ind Cas 36, Abdul Kharım Saheb v. Lakshmanaswams
 - (1926) A. I. R. 1926 Cal 1077 (1981) 53 Cal 664 93 Ind Cas 166, Pstambarjana v. Dimodar Gachart
 - [1931] A I R 1931 Oudh S12 (318) 182 Ind Cas 262, Kishun Dull v. Chheds.
 [1922] A I R 1912 Sind 29 (30) 15 Sind L R 156 65 Ind Cas 14, Sahiyram Tahilram v Toster
 - (1921) A I R 1921 All 208 (209) 43 All 550 63 Ind Cas 362, Jamilunnissa Bibi v Mathura Prasad.
- 2. (1922) 65 Ind Cas 120 (120) (Pat), Guru Mahadera Ashram Proxad Sahi v Mahabu Sahul (Costs)
 - (1890) 1890 All W N 93 (93), Nathu Eam v. Tufail Ahmal. (Interest.)

Article 182 (Ciause 5) Notes 67-68

which the assistance of the Court is required is not ao application in accordance with law.1 The reason is that it will not be possible in such a case to proceed with the executioo. But where, though the mode of assistance sought was not distinctly specified, it was clear from other circumstances what kind of assistance was really sought by the decree-holder, it was held by the High Court of Lahore that the application could not be said to be not in accordance with law.2

68. Failure to file copy of decree. - Sub-rule 3 of Order 21 Rule 11, Civil Procedure Code, provides as follows:-

"The Court to which an application is made under sub-rule 2 may require the applicant to produce a certified copy of the decree."

The question of the production of the decree thus arises only after the application for execution is filed, and, as has been seen in Note 52 ante, is not a valid consideration in decidiog the question whether the application itself is io accordance with law. It is not imperative that an application for execution should in all cases be accompanied by a copy of the decree. The Court can order the oxecution to proceed without a copy of the decree being filed.2 It has therefore been held in numerous cases that an application not accompacied by a copy of the decree caccot be said to be not in accordance with law, and this would be so even if it is dismissed

Note 67

- 1. (1893) 19 Bom 34 (35), Sha Karamchand Gohaldas v. Ghelabhai Chalaidas. (1931) A I R 1934 Bom 113 (114): 150 Ind Cas 868, Ratanchand v. Chandu
 - Lal. (1925) A I R 1925 Cal 1135 (1136) : 93 Ind Cas 364, Maharaj Bahadur v. Basiruddin Ahmed.
 - (1875) 7 N W P H C R 79 (81), W. A. Franks v. Nunch Mal.
 - (1929) A I R 1929 Nag 148 (150) : 25 Nag L R 94 : 116 Ind Cas 655, Balajo v. Gopal.
 - 2. (1932) A I R 1932 Lah 534 (534) · 138 Ind Cas 249 : 14 Lah 6, Ghanaya Lal v. Punjab National Bank Ltd., Lahore,

- 1. (1910) 5 Ind Cas 660 (662) (Cal), Raj Gir Sahay v. Ishwardhars Singh.
 - (1907) 31 Bom 162 (165) : 8 Bom L R 892, Ramachandra Sadashiv v. Larman Shadashiv.
- 2. (1910) 5 Ind Cas 660 (662) (Cal), Raj Gir Sahay v. Ishwardhart Singh.
- (1907) 31 Bom 162 (165): 8 Bom L R 892. Ramachandra Sadashiv v. Laxman Shadashir. (5 Bom L R 894, Not followed, 28 Mad 557, Followed.)
 - (1905) 28 Mad 557 (559), Pachsappa Achart v. Poojali Seenan.
 - (1929) A 1 R 1929 Bom 196 (196) : 117 Ind Cas 526, Hasan Sahib v. Ramachandra Appanya. (1929) A I R 1929 Mad 440 (442) . 112 Ind Cas 36, Abdul Kharim Sahib V.
 - Lahshmanaswams. (1916) A I R 1916 All 242 (243) : 40 All 209 : 43 Ind Cas 914, Raghunandan
 - Lal v. Badan Singh. · --- tannt

Article 182 (Clause 5) Notes 68-70

for non-compliance with the order of the Court requiring the copy to be produced.4

69. Failure to produce encumbrance certificate. — Order 21 Rule 106 (Allahabad), Civil Procedure Code, requires an encumbrance certificate to he filed along with the application. But it has been held that the non-observance of this requirement will not vitiate the application, which will nevertheless be one in accordance with law. There is no such Rule in Madras where such a certificate is to be filed only after an application for execution is filed. The non-production of such certificate will not therefore render the application not one in accordance with law.²

70. Omission to give description of property sought to be proceeded against. — Order 21 Rule 12 of the Givil Procedure Code requires, in an application for execution against moveable property belonging to the judgment debtor but not in his possession, that an inventory of the property to be attached should be given. The omission to give such an inventory is a material defect rendering the application pat one in accordance with law.¹

Rule 13 of Order 21 provides that an application for the attachment of immovable property belogging to the judgment-debtor shall contain at its foot a description of the property. An application oot containing such description has been held to be not in accordance with law? Where, however, a previous application had gives such description and the provious application was referred to in the later application, it was held to the undermentioned case? that the omission to actually give the description of property in the later application did not render it got one in accordance with law.

- (1869) 11 Suth W R 271 (272), Khettur Mohun Chuttopadhya v. Ishur Chunder Surma.
- (1938) A I R 1939 Mad 144 (144) . 175 Ind Cas 827, Venkatarama Sasiri v. Venkata Narasımham.
 - (1918) A I R 1918 Pat 547 (548) . 47 Ind Cas 993, Arjun Nask v. Lakhan. Note 69
- (1930) A I R 1930 All 188 (189) 122 Ind Cas 179, Dharamdeo Rai v. Juala Prasad.
- (1918) A I R 1918 Mad 1030 (1032) . 60 Mad 919 : 38 Ind Cas 136, Katem Pillas v. Ganapathia Pillas.

- (1915) A I R 1915 All 320 (321)
 29 Ind Css 479; 37 All 527, Abdul Raft Khan v. Maula Baksh
 - (1892) 1892 All W N 47 (47), Lachms Kuar v. Dal Chand,
 - (1892) 1892 All W N 70 (71), Mangal Sen v. Baldea Prasad.
 - (See however (1894) 1894 All W N 51 (54), Mahabir Singh v. Saira Dibi)
- 2. (1890) 1890 All W N 22 (22), Ishra v. Serhmal.
 - (1931) A I R 1931 Bom 128 (128) 129 Ind Cas 159, Saklargauda v. Bhimappa.
 - (1892) 1892 All W N S (3), Hira Lal v. Dulars Kuar.
 - (1926) A 1 R 1926 Mad 260 (260): 92 Ind Cas 109, Santaran v. Ambu. (But if remedied by amendment it, will be one in accordance with law.)
- 3. (1891) 18 Cal 462 (465), Wajshan v. Bishwanath Pershad.

Article 182 (Clausa 5) Note 71

71. Defects in vakalatnama. - Where a pleader is not authorized by any vakalatnama to act for a party, an application for execution presented by him no behalf of the party cannot be said to be in accordance with law. So also, where a vakalatnama is not signed by the pleader and does not contain his name, an application nn the authority of such a vakalatnama is not one in accordance with law." Similarly, where at the time of the application the decree holder whn has given the vakalatnama is dead, the application presented by the vakil is not one in accordance with law.23 But immaterial defects in the vakalatnama will not render the application not nne in accordance with law. Thus, the mere fact that the name of the pleader is wrongly mentioned,3 or the fact that the agent of the party giving the vakalatnama dnes not describe himself as agent, or the omission to give the date of the execution of the vakalatnama, will not render the application unt one in accordance with law. Thus, in Thiruvengadasami Iyengar v. Pavadai Pillai,58 the decresholder had appointed X as his agent to file execution petitions and the latter gave a vakalatnama to a pleader "on his behalf" in the said matter. It was held by the Privy Council that the appointment of the pleader must be taken to be nn behalf of the principal decreeholder and that the presentation of the petition by the pleader was a valid presentation for purposes of limitation.

Where once a vakalatnama is executed authorizing a vakil to execute a decree, nn further authority is required to be shown by a separate vakalatnama for applying for taking steps-in-aid of execution.²

Nots 71

- (1937) A I R 1937 Mad 239 (240) : I L R (1937) Nad 820 : 165 Ind Cas 659, Nandamans Anangabhima v. Modono Mohono Deo.
 - (1934) A I R 1934 Pesh 23 (25): 149 Ind Cas 136, Punjab National Bank Ltd. v, Dina Nath.
 - (1937) A I R 1937 Mad 760 (761) : 174 Ind Cas 28, Appajs Chelli v. Govindasams Redds.
 - 1935) A I R 1935 Mad 786 (789) : 158 Ind Cas 891, Modono Mahono Deo v. Ananaabhuma Deo.
 - [But see (1936) 63 Cal 733 (735), Jagadish Chandra v. Salya Kwktr.
 (Where an execution application duly signed and verified by
 the decree-holder is filed within three years of the decree by his
 pleader without filing vakalatnama and the Court proceeds to
 issue notices upon it, the application is in accordance with
- 2. (1935) A I R 1935 All 727 (723) : 155 Ind Cas 673 : 57 All 965, Official Receiver, Aliyarh v. Hira Lal.
- 23.(1885) 7 All 564 (565): 1885 All W N 131, Kallu v. Muhammad Abdul
- Ghans.

 3. (1936) A I R 1936 AH 636 (636): 161 Ind Cas 725: 59 AH 912, Ram Sarup
 v. Sahu Dhagwats Prasad.
 - 70 Ind Cas 291: 49 Ind • v. Pacadai Pillan • amachandra Iyer
- 5a (1922) A I R 1922 F G 225 (226) : 48 Ind App 531 : 70 Ind Cas 231 : 44 Mad 786 (P C).
- 6. (1916) A I R 1916 Pat 56 (56): 42 Ind Cas 802, Raghunandan Singh v. Junul Kushore.

72. Other defects.—The asking of a prayer which is superfluous or which caonot he granted will not render the application invalid.¹ Thus, an application by the transferee of a decree which is in accordance with Order 21 Rule 16, Civil Procedure Code, is not invalidated by the addition of a prayer for the attachment and sale of the judgment-debtor's property without giving an inventory of the property as required by Order 21 Rule 12 * Similarly, an application for execution of a decree, which is final, duly praying for execution thereof, is not invalidated by the addition of a prayer for the passing of a final decree under Order 38 Rule 5 of the Grull Procedure Code.*

The omission to specify the assessment of the land brought to sale is not a material defect vitiating the application.

A applied for execution against the same judgment-debtor in respect of two decrees X and Y. The application was rejected on the ground that it was maternally delective as to decree X. It was held that the application must be considered to have been in accordance with law so far as decree X was concerned for the purpose of a subsequent application for execution in respect of decree Y.

An application cannot be considered not to be one in accordance with law because it has been drafted on a flimsy paper.

An omission to pray for notice to he sent under Order 21 Rule 22 of the Code of Civil Procedure is not a material error which would vitiate an application. It is in fact the duty of the Court to issue the notice?

Where the plaintiff obtained a decree under which he was to produce, within a date fixed, a certain amount of money into Court for payment to the defendant, but he applied for execution against the defendant without complying with the condition, and the application was struck off, it was held that this did not render the application one not in accordance with law.⁶

See also the undermentioned cases *

- (1980) A I R 1930 All 225 (244) 52 All 619: 125 Ind Cas 477 (F B). Santha Nand Ger v. Basudevanand.
 - (1926) A I R 1926 Fat 160 (161) 90 Ind Cas 847, Jogendra Prasad Narayan Sinha v. Mangal Prasad Shau (Decree holder entitled to one third of the decretal amount asking for execution of the whole decree.
 - (1924) A I R 1924 Pat 471 (473) S Pat 42: 75 Ind Cas 812, Kishore Wal v. Jagdish Narain
 - 2. (1890) 1890 All W N 245 (246), Hayat Alt v. Rup Chand.
 - (1937) A I R 1937 Lab 401 (106) 173 Ind Cas 185, Jodh Singh v. Bhagwan Das Nanah Chand
 - 4. (1918) A I R 1918 Mad 1090 (1092) · 40 Mad 949 . 38 Ind Cas 136, Natesa Pillas v Ganapathia Pillas.
 - (1936) A I R 1936 All 467 (468) . 163 Ind Cas 841, Mehammad Shahir Dad Khan v. Sahu Nand Keshore.
 - (1909) 4 Ind Cas 1154 (1155). S Sind L R 171, People's Bank of India v. Mahomed Ali.
 - (1909) 2 Ind Cas 941 (942, 948) (Cal), E. H. Sterans v. Kamia Pershad.
 (1924) A I R 1924 Bom 64 (64), Mahomed Shidici v. Mahommed Hassan.
- 9. (1933) A I R 1933 Rang S7 (88, 89) . 142 Ind Cas 435, Kadiresin Chellyir v. Maung San Ya. (Omission to state form of notice is a formal defect.)

Article 182 (Clause 5) Note 73

73. Application valid only if made by decree-holder or his representative.—Section 51 of the Code of Civil Procedure provides that, subject to such conditions and limitations as may be prescribed, the Court may, on the application of the decree-holder, order execution of the decree. Section 146 of the same Code provides that, save so otherwise provided by the said Code or by any law for the time heing in force, where any proceeding may be taken or application made by or against any person, then the proceeding may be taken or the application may be made by or against any person claiming under him.

It follows that an application for execution can be made only by

- 1. the decrec-holder or
- 2. his representative.12

The decree-holder on record is entitled to apply for execution and his application would be in accordance with law even if his interest in the decree has been transferred to another, and even if another person who is a joint decree-holder with him is not made a party. 3 A defendant in a partition suit in which a decree has

- (1909) 1 Ind Cas 240 (242): 5 Nag L B 8, Vithal v. Gopal Rao. (Omission to specify the Court which passed the decree sought to be executed.)
- (1916) A I R 1916 Lah 316 (316) : 34 Ind Cas 955, Baldeo Sahas v. Kanhayalal.
- (1901) 4 Oudh Cas 333 (338), Ujagar Lal v. Shankar Dayal. (Where an application is made to execute the original decree and afterwards that decree is confirmed in appeal, and a fresh application is made to decree in confirmed in appeal.

- (1920) A I R 1920 Lah 448 (446): 52 Ind Cas 856, Ram Rattan v. Datar Kaur.
 - (1875) 24 Suth W R 10 (11), Duriao Roy v. Doollo Roy. (Application by person not then a decree-holder on the record, is not an application for execution.)
- 1a (1907) 31 Mad 77 (79, 80) : 17 Mad L Jour 506, Alagirisamy Naudu v. Venhatachellayathy Augus.
- 2. (1917) A I R 1917 Oudh 182 (185): 37 Ind Cas 133, Dil Alsa Begam v.
- Deputy Commissioner, Bahraich. 8. (1913) 18 1nd Cas 97 (98) · 16 Oudh Cas 70, Ejaz Hussain v. Shah Zaman
 - Mirza. (1935) A I R 1935 Mad 883 (894, 895) : 159 Ind Cas 589, Jayanarayana v.
 - Polayya. (1934) 67 Mad L Jour 63 (64) (8 N).
 - (1934) A I R 1934 Pesh 40 (43): 152 Ind Cas 443, Ahmad Ali v. Mt. Fatima
 - Sultan. (1917) A I R 1917 Mad 691 (692) : 34 Iud Cas 791, Ars Chetty v. Teerthamalas Chettu.
- (See also [1929] A I R 1929 Born 279 (283): 118 Ind Cas 694, Nadirshah Jamshedji v. Purshottamdas Ganpatdas]
- 3a (1934) A I R 1934 Bom 216 (218) 59 Bom 429 : 153 Ind Cas 176, Babamiya v. Abdul Karim (A I R 1931 Lah 600, Followed.) (1927) A I R 1927 Lah 106 (107) : 100 Ind Cas 475, Amin Chand v. Khalit.
 - (1920) A I R 1920 Nag 40 (41): 54 In I Cas 924, Amir Ali v. Gopildat. (See also (1909) 5 Ind Cas 120 (120) (Mad), Vatha Kuthiyotath v. Ash Kalahath (Other decree-holders were made porty respondents.)

Article 182 (Clause 5) Notes 73-74a

heen passed is in the position of a decree-holder and will be entitled to apply for execution.4 A joint Hindu family consisted of a father and his sons Partition was effected by metes and hounds between them hy a decree passed on an award. The father subsequently obtained a decree against a stranger in respect of a joint family debt. Subsequently, one of the sons applied for execution of the latter decree It was held by the Patna High Court that the son was a person interested in and was the holder of the decree sought to be executed and that his application for execution was in accordance with law 5

As to applications by representatives, see Notes 74 to 80 anfra.

74. Application by attaching creditor. - Suh-rule 3 of Order 21 Rule 53 of the Code of Civil Procedure provides that the holder of a decree sought to be executed by the attachment of another decree, shall be deemed to be the representative of the holder of the attached decree and to be entitled to execute such attached decree in any manner lawful for the holder thereof 1 An application by the attaching decree holder to execute the attached decree would therefore be one in accordance with law

74a, Application by decree-holder of attached decree or his transferee. - Under the Civil Procedure Code, 1882, it was held in some cases that after attachment of the decree the decree holder could not apply for execution and that such an application was not in accordance with law, while a contrary view was taken in other cases 18 The addition of the words "or his sudgment-dehtor" in sub-rule 1, clause (h) of Order 21 Rule 53 of the present Code now makes it clear that the decree holder of the decree attached is not prevented from applying for execution thereof. An application by the decree-holder of the attached decree would therefore he one in

> (1933) A I R 1933 Lah 655 (656) 14 Lah 212 189 Ind Cas 151, Nasıruddin v. Dost Mohammad 1

But an order that such an application is not competent is a finding that it is not in accordance with law

(1921) A I R 1921 Sind 18 (14) 62 Ind Cas 507 15 Sind L R 11, Ibrahim y, Firm of Gulam Hussain

4, (1923) A I R 1923 Bom 23 (23) 46 Bom 937 67 Ind Cas 417, Chundal Jamnadas v Mulchand Harjuandas

(1924) A I R 1924 P C 198 (198) 4 Pat 61 51 Ind App 321 81 Ind Cas 747 (P C), Lachmi Narayan Marwary v Balmahund Marwary

5 (1937) A I R 1937 Pat 607 (609) 173 Ind Cis 100, Alhors Rainscial Prasad v Saran Smah.

Note 74

1. (1888) 15 Cal 371 (375, 376), Peary Mohun Choudhry v. Romesh Chunder Nundy (1892) 16 Mad 20 (12), Shah Man Mull v Kanagasabapaths

Note 74a

1 See (1911) 9 Ind Cas 786 (787) 85 Mad 622, Thuchaloud Unna hoyal v. Arayayıl Pathutti (7 Bom 459 27 All 119 . 83 Cal 867, Pollowed.) 1 (1903) 13 Mad L Jour 10 (10) (N R C)

(1903) 13 Mid L Jour 265 (265), Patumma v. Idies Bears.

Article 182 (Clause 5) Notes 742-77 accordance with law if it is otherwise in accordance with law.2

The question has arisen whether a transferee of the attached decree can apply for execution under Order 21 Rule 53 of the Code. According to the High Courts of Madras, and Rangoon, and the Judicial Commissioner's Court of Nagpur, a transferee prior to attachment can apply. The High Court of Patas has held that even a transferee after attachment is entitled to apply for execution by virtue of Order 21 Rule 16 of the Code. In all euch cases the application would be in accordance with law.

- 75. Application by Conrt-of-Wards.—Where a decree is passed in favour of an estate under the management of the Court of Wards, he Court of Wards, as representing the estate, is the proper person to take out execution of the decree.¹
- 76. Application by person represented in representative suits. In the case of representative suits, a person not on the record hat who was represented in the suit by the decree-holder on record, can apply to be brought on the record and to execute the decree.
- 77. Application by stranger claiming to be representative.—
 29 and B were rival claimants to the interest of the deceased decree-holder. B filed an execution application on 5th May 1930. In a cut filed by B, it was held that B was the person entitled to execute the decree and not B. B then filed an application with three years of B's application but heyond three years of the decree. It was held that B's application was not one in accordance with

Note 75

1. (1918) A I R 1918 Pat 216 (217): 49 Ind Cas 701, Chandrida Prasad Singh v. Ketho Prasad Singh.

Note 76

1. See (1923) A I R 1923 Med 472 (473): 72 Ind Cas 234, Swaminatha Mudsliar v. Kumarasami Chettur.

^{2. (1912) 13} Ind Cas 179 (180) (Mad), Gopala Menon v. Manavihraman.

^{8. (1912) 17} Ind Cas 323 (325) (Mad), Arumugha Mudelsar v. Yagamba Bas Ammans.

[[]See also (1910) 5 Ind Cas 92 (94) (Mad), Venkatrama Iyer v. Esumsa Rowthen.]

[[]But see (1912) 13 Ind Cas 659 (650) (Mad), Thiruvengadam Pillai v. Dorndla Subbach.

^{(1910) 5} Ind Cas 1010 (1010) (Mad), Musala Reddi v. Ramaiya.
(1909) 3 Ind Cas 938 (939) (Mad), Sadagopachariar v. Raghunada-charsar.

^{4. (1928)} A I R 1928 Rang 25 (26): 5 Rang 595: 106 Ind Cas 853, Co-operative Town Bank of Padigan v. Raman Chettyar.

 ⁽¹⁹²⁷⁾ A I R 1927 Nag 132 (193): 23 Nag I, R 20: 99 Ind Cas 635, Aimaram v. Ganpati.

^{6. (1929)} A I R 1929 Pat 1 (3) ; 7 Pat 726 ; 113 Ind Cas 673, Havariram V. Kedar Nath Marwars.

law and R's application was barred by limitation. See also the undermentioned case.

78. Application by transferee of decree.—The transferee of a decree is a representative of the decroe-bolder and would, under Section 146 of the Code of Orul Procedure, be entitled to apply for execution. That provision should, however, be read subject to the other provisions of the Code one of which is Order 21 Rule 16, which provides that a transferee in writing or by operation of law may apply for execution in the same manner as the decree-holder himself. An application by a person in whose favour there has been an oral assignment of the decree cannot, therefore, be said to be in accordance with law. Where an assignment is refused to be recognized by the Court as being a colourable one, the application by the assignee for execution is not one in accordance with law. But except in such a case as the last mentioned one, an application by a transferce claiming to be such would be one in accordance with law. Come though the assignment is not proved or recognized and even

Note 77

- (1938) A I R 1938 Pat 531 (532): 178 Ind Cas 759, Achilanand Girs V Saran Singh
- 2. (1917) A I R 1917 Mad 2 (3) · 87 Ind Cas 750, Sammatha Asars v. Gopala-

judgment debtor.) *

- 1. (1909) 2 Ind Cas 433 (434) (Mad), Vencatasubbiah v. Dade Sahib.
- (1929) A I R 1929 Mad 252 (256)
 Mad 590 118 Ind Cas 775, Palani. appa Chethar v Valhammai Achi (Court recognizing assignment of decree and allowing assignment of exerct gives firsh strict limitation)
 - (1894) 16 All 483 (492) 1894 All W N 184, Badre Narain v Jas Kishen Das
 - (1911) 9 Ind Cas 349 (350) (Bom), Salekhan v Viswanath,
 - (1909) 5 Ind Cas 120 (120) (Mad), Vasha Kuthayahath v Asha Kalahath
 - (1937) A I R 1937 Dom 365 (370) 170 Ind Cas 877 I L R (1937) Bom 691, In re Janks Prasad Poddar.
 - (1902) 26 Mad 258 (259), Chathoth Kunhi Palli v. Saidindatide Kunhamnad
 - (1934) A I R 1934 Rom 216 (218, 219) 58 Bom 428 153 Ind Cas 176, Baba miya v .1bdul Karim.
 - (1899) 1899 All W.N. 16 (16), Imdad Hussam v. Latta Prasad. (An application for execution of a decree made by a transferre under Section 232 of the Code of Civil Procedure, 1892, though unsuccessful, is a step-inaid of execution.)
- (1912) 16 Ind Cvs 807 (807) (Mad), Ramanathan Chettiar v. Raghavendra Row
- (1912) 13 Ind Cas 78 (79) (Mad). Bamanathan Chettear v Sedhanatha Gounden.
- 4. (1907) 1907 All W N 39 (39), Intilhab Hussan v Pafunnissi
- (1938) A J R 1938 Rom 809 (341) 176 Ind Cas 152, Dayathhai v Dayathai,
 (1909) 4 Ind Cas 582 (582) 84 Bom 68 Vinayat Vaman v, Anarda Ramji.

Article 182 (Clause 5) Note 78 though the assignment is, in subsequent proceedings, found to be invalid 6

Where a transfer of a decree bas to be registered under the law in order to pass a title, an application by the transferee under an unregistered transfer cannot be considered to be one in accordance with law. Where, bowover, in such a case the application is made both by the decree-bolder and the transferee, the application would be one which will save time for a later execution petition by the transferee who has obtained a second assignment of the decree and got it duly registered. In the undermentioned case, where the transferee of the decree under nn unregistered transfer made his application, but subsequently got the assignment registered within the tumo prescribed by the Registration Act, it was held that the registration would date back to the date of the execution and that the application made by bim must be considered as one in accordance with law.

There is a conflict of opinion on the question whether an application by the transferee of the decree merely for his being recognized as a transferee without any prayer for execution is one in accordance with law. According to one viow, there is no provision in the Civil Procedure Gode enabling the transferee to make such an application, that such an application is therefore legally incompetent and is not in accordance with law oither as an application for execution or as an application to take a step-in-aid of execution. A contrary view, namely, that is will be in accordance with law to take a step-in-aid of execution, has been taken in the undermentioned cases.

- C. (1910) 5 Ind Cas 120 (120) (Mad), Vasha Kuthiyahath v. Ashi Kalahath. (1902) 12 Mad L Jour 348 (319), Sreepada Brahmayya Pantulu v. Parau-ramayya.
 - (1924) A I R 1924 Mad 678 (675): 47 Mad 641: 60 Ind Cas 103, Rajilagiripathy v. Dhatani Sankaran. [But see (1918) A I R 1918 Mad 1204 (1204): 89 Ind Cas 950, Kailass
- [But see (1918) A I R 1918 Mad 1204 (1204): 39 Ind Cas 300, Zuman Pandaram v. Ramanuja Nadu) 7. (1927) A I R 1927 Mad 264 (264), Lakshmana Pattar v. Surpayya Pan
- daram.
 8 (1927) A I R 1927 Mad 264 (264), Lakshmana Pattar v. Suppayya Pandaram.
- 9. (1890) 13 All 89 (D2) . 1890 All W N 186, Abdul Majid v. Muhammad Fainligh. 10. (1935) A I R 1935 Sind 26 (26) : 159 Ind Cas 801, Mt. Memoo Mahamed
- 150. [1955] A. I. 1955 Sind 26 [26]: 159 Ind Cas 501, Mr. Memor All Fol-Ismail v. Mahomed Sidik Pir Mahomed. (A I R 1933 Sind 341, Followed.)
 - (1933) A I R 1933 Sind 341 (341): 27 Sind L R 314 · 147 Ind Cas 470, Detraj Mullani Sahai v. Fatch Chand Ram Chand.
 - (1937) A I R 1937 Bom 365 (367) . 170 Ind Cas 877 : I L R (1937) Bom (91.

 In Re Janls Frasad Poddar.
 - i _ ai... , gm √.
 - (1925) A I R 1925 Neg 362 (363) · 68 Ind Cas 112, Jagannath v. Shriniras.
 - (1907) 23 All 201 (302): 4 All L Jour 181: 1907 All W N 74, Pitam Singh v. Tota Singh. (1905) 31 Mad 234 (235): 4 Mad L Tim 72: 18 Mad L Jour 24, Annarialis

Mudaliar v. Ramauer.

The fact that the transferee is a benamidar for another person will not prevent the application from being one in accordance with law, for the purpose of a subsequent application by the true transferee.²²

N obtained a transfer of a decree from the heir of the deceased decree-bolder and made several applications for execution. G purporting to be a legate of the deceased decree-bolder sucd N and obtained a decree that he was entitled to the decree amount. Then he applied for execution and claimed the applications of N avigiving him starting points of limitation. It was held by the High Court of Madras that N's applications were in accordance with law as, at the time they were made, N was the only person who was, on the face of the decree, entitled to execute it, and that the executing Court had no concern with the rights of any person other than the person appearing on the face of the decree as the decree-holder. 19

H obtained a decree in his favour as the manager of a joint limind family consisting of himself and his sows H took out execution and recovered a portion of the decree amount, and then disappeared. N_i a son of H, applied for execution subsequently alleging that after the disappearence of H, he was the manager of the family I was held that as manager of the Lamily he was entitled to execute the decree without any question of assignment of the decree, that even otherwise N may be considered to be a transferce by operation of law of the decree from H, and that therefore his application was one in accordance with law 11

Narain Sarup v. Daga Shanler,

⁽¹⁹³⁸⁾ A I R 1938 Nag 191 (192) 174 Ind Cas 243, Tanba Yadorao v. Chandrashankar Balkrishnappa.

⁽¹⁹³³⁾ A I R 1938 Rang 55 (56) 144 Ind Cus 310, Mordoo v. Mahomed

^{12 (1907) 10} Oudh Cas 263 (267), Abdul Wahid Khan v Nawab Bagar Ali

^{(1892) 20} C1 388 (895), Ballishen Das v. Bedmats Koer.

⁽¹⁹²⁷⁾ A I R 1927 Lah 110 (110) 8 Lah 35 100 Ind Cas 515, Gurdial Singh v. Gurbakhsh Singh.

⁽¹⁹²⁵⁾ A I R 1925 Mad 701 (701, 702) 49 Mad 553 68 Ind Cas 409, Palaniappa Chetty v Subramania Chettiar.

⁽¹⁹¹⁵⁾ A I R 1915 All 264 (264) 37 All 414 29 Ind Cas 593, Kamta Prasad v Indomati

⁽¹⁹³⁸⁾ A I R 1938 Pat 457 (459) 17 Pat 223 177 Ind Cas 992, Mohammad Anas v. Bhugendra Prasad.

^{(1890) 6} Mad L Jour 31 (32), Arasappan v Pulugasary.

^{(1870) 4} Feng L R App 40 (40), Purnachandra Poy v. Abhaya Chandra Poy. (1935) 89 Cal W N 1073 (1074), Tahir Ali v. Abdul Gons.

⁽But see (1914) 25 Ind Cas 555 (556) (Cal), Ramlat Pahari v Babulat Barth

^{(1882) 9} Cil 633 (634) 12 Cil L R 146, Denonath Chuclerbutty v. Lallit Coomar Gangopadhya

^{(1889) 16} Cal 353 (362) 13 Ind Jur 381, Gour Sundar Lahiri v. Hem Chunder Choudhry.] 13 (1920) A I R 1920 N of 185 (185) 43 M of 424 57 Ind Cas 753, Hars

Krishnamurthi v. Suryanarayanamurthi 14 (1938) A I R 1938 All 256 (238, 259) I L R (1938) All 425 175 Ind Cas 590.

Article 182 (Clause 5) Notes 78-79 A person who has only a right against the decree-holder to obtain an assignment of the decree from him, but who has actually got no assignment, is not entitled to apply for execution and his application would not be one in accordance with law ¹⁵

Where a decree is transferred to another Court for execution, an application by the assignee to that Court requesting it to send back the records of the case to the Court which passed the decree "for the purpose of further conducting the suit" is a step-in-aid of execution. The reason is that his claim as assignee can be recognized only by the Court which passed the decree and for that purpose it is necessary to send back the records to that Court. The court was the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the co

79. Application by agent. — Order 3 Rule 1 of the Cuil Procedure Code provides that an application required or authorized to be made or done by a party in Court may, except where otherwise expressly provided by any law for the time being in force, be made by the party in person or by his recognized agent or by a pleader or his behalf. Rule 2 of the same Order states who are to be considered recognized agents for such purposes. A person so authorized to act for the person entitled to execute the decree can apply for execution, and if such application is made by him, it would be one in accordance with law!

The mere fact that the authorization such as the power of attorney is not filed in Gourt along with the application for execution does not vitiate the application. For will immaterial defects in the power of attorney render the application not one in accordance with law. 23

In Chhajju v. Lehna, where an application was presented by a person who had no power of attornoy from the decree-holder, and, on objection being raised, ebtained a power of attornoy and filed it in Court within the period of limitation, it was held that there was then a proper application before the Court on which the Court could

Nnte 79

- 1 (1916) AT R 1916 Mad 601 (603); 18 Ind Cas 135; 38 Mad 131, Venkalaramana Auger v. Narasinga Row,
- (1927) 52 Mad L Jour 23 (23) (N n c)
 (1913) 15 Ind Crs 526 (526, 527) : 1912 Pun Re No. 118, Ganga Ram v. Dina Nath.
- 2a.(1914) 1914 Mad W N 43 (43) (5 N).
- (1914) A I R 1914 Med 632 (633) . 23 Ind Cas 99, Srinivasi Ipenjar 4. Thirumalas Chetty.
- 3. (1929) A I R 1929 Lab 478 (479) : 113 Ind Cas 781.

 ⁽¹⁹²⁵⁾ A I R 1925 Bom 472 (472): 90 Ind Cas 561, Pandujoli v. Sarla Pirati.

⁽¹⁹¹⁶⁾ A I R 1916 P C 147 (147, 148) : 43 Cal 990 : 43 Ind App 103 : 31 Ind Cas 69 (P C), Jatindra Nath Basu v. Peyer Deye Debi.

^{16. (1926)} A I R 1926 Mad 431 (432): 92 Ind Cas 770, Ayyaru Pillas v. Varadhrasa Pillas.

^{17. (1926)} A I R 1926 Mad 431 (432):92 Ind Car 770, Ayyaru Pillai v. Varadhraya Pillai.

Article 182 (Clause 5) Notes 79-81

act. Where A, a decree-holder, attained majority on 17th July 1925, and on 10th December 1925 one X applied on A's behalf for execution of the decree, without any power of attorney from X but A ratified X's act within three years of his attaining majority, it was held that the ratification rendered the application valid with effect from the date of the ratification.

Where an agent held a power of attorney under two point decree-holders, and he applied for execution not knowing that one of the decree-holders was dead at the time of the application, it was held that it was an application in accordance with law.⁵

Under the old Civil Procedure Code, Sections 36 and 37, it was held that where the deerce-holder at the time of the application was resident within the local limits of the Court, an application presented by his agent even though properly armed with the power of attorney was not in accordance with law. This, however, is no longer law in view of the present Rules 1 and 2 of Order 3 of the Code.

- 80. Application by pleader. See Note 71 ante.
- 81. Application by executor of decree-bolder without probable.—It was held in the andermentened case that an application for execution by the executors of the original decree-holder, if in proper form, is a step-in-aid of execution oven though probate was not obtained at the date of the application. In support of this view the decision in Hafizuddin Chowdhry v. Abdul Aziz, which held that the omission to produce a succession certificate did not render the application by the hors ineffectual, was relied upon.
- 81a. Previous application for execution need not be against the same person or property or for the same relief. — Where the decree grants a single relief, preceimed execution thereof will not be permitted. But, where the decree grants different reliefs or grants relief against different persons jointly, the application for execution in respect of one or more of such reliefs or against one or more of such
- (1931) A I R 1931 Lah 600 (601) 135 Ind Cas 207, Ghanaya Lal v Madho Parshad
 - (1930) A I R 1930 Lah 603 (604), Hadho Prashad v Ghanaya Lal
- (1893) IS Cal L R 18(22), Americanussa Choudhrans v. Ilisanulla Choudhrs,
 (1901) 23 Ali 499 (300, 301) 1901 Ali W N 161, Meran Lal v. Unirao Singh,
 7. See Order 3 Rule 2, Note 2, Pount (1) of the Authors, Cval Procedur, Cele

Note 81

1. (1909) 4 Ind Cas 118 (118) (Cal), Hars Badans Dass v. Gebenda Chandra Das 2. (1893) 20 Cal 755 (757)

Note 81a

- (1933) A I R 1933 Bom 364 (366) 57 Bom 468 146 Ind Cus St3, Panaja Gerikar Lal v. Ratauchand Hayarimal.
 - (1913) 19 Ind Cas 304 (301) 35 All 204, Ram Chander Navl Kalia v, Abdul Halim
- (1873) 19 Suth W R 417 (415), Romanauth Jha . Boy Luchmeeput Singh Bahadur.
- (1935) A I R 1935 Cil 115 (119) 154 Ind Cas 654, Kusura Kamina Debi v. Saulesh Chandra Chalvararty.

Article 182 (Clanse 5) liotes 81a-82

persons, will be in accordance with law and will save time for a subsequent application in respect of any relief granted by the decree and against all the indoment-dehtors.2 It is not necessary that, in order to save limitation, the application should have been directed to the same property which is the subject-matter of the subsequent application or to the same person against whom proceedings are sought to be taken in the subsequent application. Thus, an execution application against the principal debtor has been held to save limitation against the snrety.3

On the same principle, execution by the arrest of the judgment. debtor will save time for a subsequent application for execution by sale of the property of the indement dehtor. Conversely, an application for execution by attachment and sale of some of the properties of the sudgment-debtor will save time for a subsequent application for proceeding against his other properties or against his person.

82. Application against legal representative of indomentdebtor. - The Civil Procedure Code does not contemplate any specific application to bring on record the legal representative of the judgment dehtor, though, in practice, it is usual to add a prayer to that effect. The omission, therefore, of an express prayer to bring the legal representatives on record will not render the application against the legal representatives one not in accordance with law.

- 2 (1893) 19 All 93 (100) 1893 All W N 57 (F B), Sadho Saran v. Hol Pande.
 - (1837) 1837 All W N 31 (31), Bhilabara Lal v. Ali Mardan Khan.
 - (1867) 8 Suth W R 99 (100), Burodalant Ron v. Ram Kishoree Duit. (1801) 18 Cal 515 (517), Radha Kishen Lall v. Radha Pershad Singh.
 - (1875) 7 N W P H C R 95 (96, 97). Ram Balsh Singh v. Madat Ali-
 - (1915) A I R 1915 Mad 811 (S12) : 21 Ind Cas 32 : 33 Mad 199, Balasubramansa Chetty v. Swaranammal.
 - (1926) A I R 1926 Na; 153 (160) : 89 Ind Cas 135 : 91 Nag L R 118, Jairan v. Adlu.
 - (1890) 15 Bom 212 (211), Dalichand Bhudar v. Bai Shither.
 - (1926) A I R 1926 Cal 1019 (1021) : 53 Cal 592 : 96 Ind Cas 562, Upendra
 - Nath Bose v. K. P Dutt. (1899) 26 Cal 888 (890), Nepal Chandra Sadoo Khan v. Amrila Lall Salvo
 - Khan. (1894) 1859 All W N 95 (96), Naram v. Golal.

 - (1867) 8 Suth W R 274 (274), Joyeth Probash Gangelly v. Kalee Corner Loy.
 - (1923) A Î R 1922 AH 383 (089) : 41 AH 106 : 65 Ind Cas 358, Rara Erichh Em v. Deco Tiwari.
 - (1860) 5 Suth W R (Misc) 40 (41), Opperdur Mohun Mustafee v. Triff. (1922) A 1 R 1922 Born 191 (195) 67 Ind Cas 169 : 46 Born 719, Salabat
- Zukappa v. Kesharrao Partafrao. 3 (1923) A 1 R 1923 All 384 (395) . 74 Ind Cas 1011. Germath Shukul v. Sat Naram Shukul
- 4 (1877) 2 Rom 201(298), Jamnadas v. Lalitaram,

Nate 82

1 (1993) A I R 1933 Mad 568 (568, 569) : 113 Ind Cas 811. Thirmpaths 12 1975 gar v. Pepanammal. (1190-) 31 Mad 77; A 1 R 1925 Mad 701; A 1 R 1932 Mad 73 : A I R 1931 Mad 303, Relied on)

There is a difference of opinion as to whether a proceeding taken against a wrong person as the legal representative of the judgmentdebtor is one in accordance with law which will give a fresh starting point for a subsequent application against the proper representatives. It has been generally held that such an application, if made bona fide, is a good application and that even if it is not a proper application for execution, it would still be a valid application to take a step-in-aid of execution 12 A contrary view has been held in tho undermentioned case.2 In view of the clear pronouncement of their Lordships of the Privy Council in Khalil Ur Rahman v. Collector of Etah,3 that the question of home fides of the decree-holder is not a material consideration in deciding the question whether an application is in accordance with law, it seems doubtful whether the first of the two views stated above is not open to reconsideration. Where there are two rival claimants to the estate of the midement debtor. each claiming to be the true representative, and the decree holder in good faith chooses one of them and proceeds against him, it has heen held that the person chosen would be deemed to represent the estate, and the application against him would thus be regarded as being one in accordance with law.4

As to the validity of applications for the arrest and detention of the legal representatives in execution of the decree against the deceased judgment-dehtor, see Note 57 ante.

83. Application where judgment-debtor is a minor .- Where a decree was obtained against a minor A represented by his mother B as guardian ad litem, and an application for execution of the decree was made against B herself and not as guardian of A, and the application was granted and certain property of the minor A was attached, it was held that the application could not, by reason only of the said mistake, be regarded as one not in accordance with law.1 See also the undermentioned case 2

```
1a (1935) A I R 1935 Mad 161 (162) 155 Ind Cas 327, Subramania Desika
Gnanasambanda Pandara Sannadhs v. Rangaznams Chelliar
```

^{(1938) 40} Pun L R 25 (26), Mt. Harbanso v. Munshi Bam.

^{(1892) 1892} All W N 241 (242), Gopal v. Har Prasad.

⁽¹⁹²⁷⁾ A I R 1927 Pat 92 (93) 99 Ind Cas 501, Ganeshwar Singh v Than Mal.

⁽¹⁹³²⁾ A I R 1932 Pat 906 (307) 11 Pat 508 139 Ind Cas 640, Brazasunder Das v. Radha Prasad Bhagat.

⁽¹⁹²⁶⁾ A I R 1926 Lah 34 (35) 90 Ind Cas 1050, Mt. Begain Bibs v Bulgos

^{(1908) 35} Cil 1047 (1019) Bipin Behars Matter v. Bibi Zohra.

^{(1892) 20} Cal 388 (396), Ballashen Das v. Badmata Koer. 2. (1910) 6 Ind Cas 38 (40) 32 All 404, 6 yanendranath Basu v Bans Nahalo

^{3. (1934)} A I R 1934 P C 14 (16) 61 Ind App 62 147 Ind Cas 373 55 All

^{993 (}PC). 4. (1909) 4 Ind Cas 1059 (1000) 33 Mad 6, Pamaswamu Chelliar v Orrelamans Chetts.

Note 83

^{1. (1887) 12} Bom 427 (430), Harry, Narayan,

^{2, (1918)} A I R 1918 All 289 (289) . 43 Ind Cas 519, Ram Lalhan Das v. Shankar Singh.

Article 182 (Clause 5) Notes 83–85 Where an application for execution prayed for the attachment and all off the minur judgment-debtor's property but it was subsequently found that the quantian ad litem was dead at the date of the application, it was held that the irregularity was not material and that the application should be considered to be in accordance with law.³

- 84. Application against trustee judgment-debtor who has ceased to be trustee subsequently. Where a decree was obtained against A as trustee, but subsequently A was removed from the trusteeship, and the decree-halder, not knowing the fact of such removal, applied for execution against A, it was held that the application must be considered to be one in accordance with law in the absence of proof that at the date of the application, A had been removed from the trusteeshin.
- 85. Application against judgment-debtor who was dead at that date.—There is a difference of opinion as to whether an application for execution against a judgment-debtor who is dead at the time the application is made can be considered to be one in accordance with law. On the one band, it bas been held that a born fide application of that kind would give a fresh starting point of time. On the other hand, a contrary view has been taken, namely that such an application cannot be considered to be one in accordance with law. In Mt. Ram Kali v. Bir Bhadarman, it was held by 3. (1931) A IR 1931 Lah 636 (637). 134 Ind Cas 1107, Ghulam Hussam v. Navaran Sirah.
 - (1933) A I R 1933 Mad 696 (697): 145 Ind Cas 714, Jagannatha Rao v. Narayanamurtu.
 - Narayanamurty. (1924) A I R 1924 Pat 333 (334): 72 Ind Cas 1003, Puran Mall v. Mt. Bilus. (1936) A I R 1936 Nag 77 (78), Prathad v. Mohanial.

Note 84

1 (1926) A I R 1926 Mad 821 (322): 93 Ind Cas 709, Trustees, Parakkat Decaswom v. Venkatachalam Vadhyar.

- (1893) 17 Mad 76 (79) · 4 Mad L Jour 8, Samia Pillas v. Chockalinga.
 (1935) A I R 1935 Mad 161 (162) : 155 Ind Cas 327, Guanasambanda
- Pandara Sannadhi v. Rangasucam Chethar. (1932) A I R 1932 Pat 222 (221): 11 Pat 546: 133 Ind Crs 91, Sheophind
 - [1933] A.I. R. 1932 Pat 222 (221): 11 Pat 546: 133 Ind Crs 91, Sacryonas Ram v. Mt. Kishunbansi Kner.
 [1924] A.I. R. 1924 Pat 333 (334): 72 Ind Cas 1003, Puran Mall v. Mt.
 - Dilwa. (1926) A I R 1926 Mad 821 (322): 92 Ind Cas 709, Parallal Decaswors v.
 - (1926) A I R 1926 Mad 321 (322): 93 Ind Cas 709, FaraGat Detastor.
 - (1909) 35 Cal 1017 (1019), Bipin Behars Miller v. Bibi Zohra. (1934) A I R 1931 Lah 55 (55) : 154 Ind Cas 207, Maula Balksh v. Moham-
- mad Ikram. 2. (1934) A 1 R 1934 All 463 (464) 149 Ind Cre 1131 : 56 All 463, Mt. Rare
- (1934) A I R 1934 All 463 [464] 149 Ind Cre 1131; 56 All 463, 312 July
 Kali v. Br Bhallarman Tewars.
 (1931) A I R 1934 Bom 215 (216) 153 Ind Cre 191, Manjulabas Kashmath
 - v. Pandurang Jayaram. (1903) 13 Mad L Jour ST (ST) (N R C).
 - (1897) 7 Mad L Jour 310 (310) (N 1 C). (Critical Note on (1897) 19 All 337 : 1897 All W N 75, Madho Prasad v. Kriho Prasad)
- 1897 All W N 75, Madho Prasad v. Kriho Prasad v. Kesho Prasad v. (1897) 19 All 337 (239) : 1897 All W N 75, Madho Prasad v. Kesho Prasad. 3. (1934) A I R 1994 All 463 (164) . 56 All 463 : 149 Ind Cas 1191.

Article 182 (Clause 5) Notes 85-86

the High Court of Allahabad that an application for execution against a judgment-debtor who is dead would not be in accordance with law. but that an application for transfer of the decree to another Court for execution would be a valid step-in-aid of execution. In Mannulabai Kashinath v. Pandurang Jayaram, the High Court of Bombay held that an application against a deceased undement debtor, whether for execution or for a step-in-aid of execution, would be not in accordance with law. The same High Court held in a later case 40 that an application for transfer of the decree for execution in ignorance of the death of the judgment-debtor, would be a valid step. in aid of execution. The reasoning of the decisions holding that such applications are in accordance with law is not clear. In Abdus Sattar v. Mohini Mohun, it was observed that the rule that when a suit is filed against a dead person it is a nullity, did not apply to execution proceedings. If the principle is that a proceeding against a non-existing person is a nullity, it is difficult to see why execution proceedings should be excepted from the operation of the rule.

86. Application, if need be bona fide,-Section 20 of the Act of 1859 provided that no process of execution should issue to enforce any judgment, decree or order unless the application for execution was made within three years of "some proceeding" to enforce such judgment, decree or order, or to keep the same in force. It was held in cases under that Act that the words "some proceeding" meant some bona fide proceeding. The Courts were therefore held bound to decide in each case whether the previous application was a bona fide one or was merely a colourable one 1

```
4 (1934) A I R 1934 Born 215 (216) 153 Ind Cas 181.
4a (1934) A I R 1931 Bom 266 (270) 151 Ind Cas 767, Gopal Shankar v Pas-
        sing Premji
```

5 (1933) A I R 1933 Cal 684 (697) 149 Ind Can 1024 Note 86

1, (1970) 13 Moo Ind App 479 (489) 5 Beng L R G11 14 Suth W R 21: 2 N W P H C R 402 2 Suther 351 2 Sw 597 (P C), Maharajah Dheray Mahtab Chund Bahadoor v. Bulram Sunah.

(1872) 18 Suth W R 76 (77) . 11 Beng L R 23 (P C], Roy Dhunput Singh v. Madhomotee Dabia

(1874) 21 Suth W R 97 (100) 13 Beng L R 169 (P Cl. Benoderam Sein v. Brosendro Narain Roy.

(1869) 2 Beng L R App 24 (25), Ghelam Ashgar v. Lakhman, Dela (1869) 2 Beng L R App 45 (46), Ganga Narayan Choudhry v. Mohammad

Suchar. (1869) 3 Fleng L R App 142 (143), Adina Ed. a Sububunnissa Bibi

(1871) 6 1kng L R App 146 (146, 147), Maharaja Dhira; Mahtab Chand Bahadur v Lakks Bibs.

(1866) 6 Suth W R Mise 76 (77), Maharam Indurgeet Koonicur v. Maz im Ali Khan

(1866) 6 Suth W R Misc 91 (92), Tiluck Chunder Gooko v. Gourmones Debee (1866) 6 Suth W R Mice 97 (97) Bhugebutty . Mohun Chunder Puterdundo

(1866) 6 Suth W. R. Mise 98 (101) Beng L. R. Sup Vol. 492 1 Ind Jun (N. 8) 421, Ram Sahaye Sinjh v. Dejun Sinjh (1866) 6 Suth W R Mts 101(106) 2 Ind Jur(XS)1, W G X Pri se 1 Lentus

Lal. (1867) 7 Suth W R 10 (10), Shoo Chand Chunder v. Mr D Grant, (1867) 8 Suth W R 98 (98, 93), Ishan Chunder Bese v. Jug bundles Ghose, Article 182 (Ciausa 6) Note 86

Under the later Acts the date of applying was made the starting point of limitation. There has been a conflict of opinion on the

```
question whether, under these Acts, the application should be long
   (1867) S Suth W R 199 (199), Ameerun Bibee v. Shib Pershad Thaloer.
   (1867) 8 Suth W R 268 (268), Kista Kant Bural v. Nustarinee Debia.
   (1867) 8 Suth W R 306 (307), Tabbur Singh v. Motee Singh.
   (1868) 9 Suth W R 443 (444, 445), Tabbur Singh v. Motee Singh.
   (1868) 9 Suth W R 565 (566), Rajah Sutto Churn Ghosal v. Bhorub Chun-
         der Brohmo.
   (1868) 10 Buth W R 224 (224) : 12 Beng L R 506n, Gunga Bishen Chund
         v. Maharajadhiraj Mahatab Chund Bahadur.
   (1868) 10 Suth W R 218 (218), Kalce Kishore Bose v. Prosunno Chunder
         Rou.
  (1869) 11 Suth W R 70 (71) : 2 Beng L R A C 191, Luchmeeput Singh B-7
```

v. Waked Als. (1869) 11 Soth W R 80 (80) : 2 Beng L R A C 196, Raja Sutto Surn Ghossal v. Bhurab Chunder Brohmo. (1869) 11 Sath W R 269 (269), Brojendro Naram Roy v. Binode Ram Sen.

(1869) 11 Suth W R 567 (569) : 3 Peng L R App 17, Gaur Mohan Banerfee v. Tara Chand Banerice. (1869) 12 Suth W R 281 (281), Mahomed Baker Khan v. Sham Dey Koer. (1869) 12 Sath W R 357 (359), Juttadharee Singh v. Wurter Singh. (1869) 12 Suth W R 436 (437) : 4 Beng L R A C 1, Khaja Abdul Gannet

v. N. P. Pegose. (1970) 13 Suth W R 40 (41), Ram Dhun Goor v. Geerco Dessee Dossee. (1970) 13 Suth W R 164 (166), Medhoometty Debia v. Dhunput Singh. (1870) 14 Suth W R 112 (113), Ray Coomar Baboo v. Judeo Bungshee. (1871) 15 Soth W R 162 (162), Maharajah Dhiraj Mahalab Chand Rahadoor v. Medhoo Seedun. (1871) 15 Suth W R 203 (201), Meer Leoft Ali v. Abco Bibee.

(1871) 15 Suth W R 356 (356). In the matter of Kaleedass Ghose. (1871) 15 Suth W R 449 (450), Koylas Nath Ghose v. Netya Shama Dusee. (1571) 15 Suth W R 473 (473), Tarnek Chunder v. Huro Chunder. (1871) 15 Suth W R 530 (531), Moonshee Synd Ameer Ali v. Saheb Singh-(1871) 16 Suth W R 267 (268), Pran Kishore Deb v. Kishen Churder Choudhry.

(1871) 16 Suth W R 226 (227), Uddovto Churn Sahre v. Ram Dhun R.y. (1872) 17 Soth W R 29 (29), Jado Lall v. Padha Kuhen Muser. (1972) 17 Suth W R 355 (355), Jophishen Shaha v. Bishola Meges Chowdrain. (1872) 19 Suth W R 193 (191), Rajeeb Lechun Saha Choudhryx, Mr. James Wilford Masseyk. (1873) 18 Suth W R 254 (235), Bullohee Kant Bhullacharfee v. Kerlash Chunder Roy.

(1873) 19 Suth W R 102 (103), Molecondonath Bhadcory v. Shib Chunder Bhadwry. (1873) 19 Sath W R 801 (302), Mr. T. C. Lethbridge v. Problad Sen. 12 Beng L R 500, Chowdhry Wated Ali (1873) 20 Suth W R 31 (33) v. Mullick Fragel Att (1874) 21 Suth W R 244 (244), Hur Sahey Singh v. Gobind Sahry.

(1974) 21 Suth WR 418 (444), Gorsain Gopal Dutt Pundit v. The Court of Wards. (1878) 3 Cal 47 (57) · 4 Ind App 127 · 3 Sar 721 : 3 Suther 423 : 1878 Fna Re No. 7 : 1 Ind Jur 457 (P.C). Delhi and London Bank v. Orchard. (1979) 1 N W P H C R 145 (145), Kubun Chund v. Kowner Atlander Ger. (1567) 4 Rom H C R A C 86 (87), D. A. Dalra v. Lalshuman Hare Patie

(1575) 1875 Ibm PJ 222 Rapho v. Appa.

fide, one class of cases holding that it should be2 and another class of cases that it need not be so.3 The conflict must now be taken to have been set at rest by the decision of their Lordships of the Privy Council in Khalil Ur Rahman v. Collector of Etah,4 that it is not necessary for an application to be in accordance with law that it should have been made bona fide. In that case an application for execution was made on 2nd June 1925 in respect of a mortgage decreo dated 29th June 1922, praying for the sale of the mortgaged properties. The Court ordered certain copies to be filed in answer to which the yakil stated that he simply wanted in that application to get the legal representatives of the judgment-debtor brought on the record. Notices were ordered to the alleged legal representatives but were returned unserved and the decree holder taking no further steps, the application was struck off The decree-bolder again applied on 8th July 1926 for sale of the property. On this application, the legal representatives were brought on the record, but no further steps being taken this application also was struck off. Their Lordships, approving of the view taken by the Full Bench of the Allahabad High Court in Kanastha Co. Ltd v Sitaram Duley, observed as follows

- 2 (1926) A I R 1926 All 95 (99) . 48 All 468 90 Ind Cas 938. Shee Prasad v. Mt. Narams Bas (1926) A I R 1926 All 376 (376) 93 Ind Cas 369, Ram Bahadur v. Rahat
 - Als. (Bogus application) (1931) A I R 1931 Bom 425 (425) 134 Ind Cas 699, Hars Mahadev v, Vishnu Balakrishna.
- (1931) A I R 1931 Sand 160 (161) , 134 Ind Cap II82 25 Sand L R 528. Volkart Brothers v Achragram.
- 2. (1874) 22 Suth W R 512 (516) (F B), Eshan Chander Bose v. Prannath Nag.
 - (1874) 22 Suth W R 154 (155) 14 Beng L R 144n, Rohince Nundan Mitter v Bhaguan Chander Ron
 - (1875) 24 Suth W R 459 (460), Mt Moracho Koper v. Chutoorbhoo: Sahou. (1877) 3 Cal 518 (521) 1 Cal L R 403, Unnoda Persad Roy . Roorpan Als.
 - (1929) A I R 1929 All 625 (650) 118 Ind Cas 17 52 All 11 (F B). Rayastha Co , Lid v. Sita Rain Dubey. (1875) 23 Suth W R 327 (328), Shurut Chunder Sen v. Abdool Khyr Mah-
 - moed Mohulesur Billah
 - (1883) 1883 Pun Re No 23, Baness v. Turton
 - (1878) 2 Mad 1 (3) 3 Ind Jur 208, Prabhacara Rose v. Potannah
 - (1891) 1891 All W N 148 (148), Debi Dass v. Umrao Singh.
 - (1890) 1890 All W N 77 (78), Halima Bibi v. Nishan Bibi.
 - (1930) 131 Ind Cas 678 (679) (All), Rupas Rai v Murat Tenars (1930) A I R 1930 All 814 (814) 128 Ind Cas 231, Ram Noth v Ram Sahas
 - (1928) A I R 1928 Oudh 337 (338) 110 Ind Cas 701 3 Luck 5-0, Buggaya Bibi . Prag Tekari
 - (1930) A I R 1930 All 188 (189) 122 Ind Cas 179, Dharamdeo Ras v Jugla Prasad.
 - (1935) A I R 1935 Nag 131 (132) 31 Nag L R 333 156 Ind C15 111, Hanu-man Lala Kalar v Sheonarayan Sonar (1933) A I R 1933 Sind 78 (51) 27 Sind L R 109 142 Ind Cas 459, Achray-
 - sing Ram Sing v. Achragram Sahns. (1934) A I R 1934 Pat 289 (289) . 149 Ind Cas 102, Sea Ray v Shestens MISSEF.
- 4. (1934) A I R 1934 P C 14 (16) 147 Ind Cas 323 . 61 Ind App C2 55 All 293
- 5. (1929) A I R 1929 All 625 (650) 118 Ind Cas 17 . 52 All 11 (F E).

Article 182 (Clause 5) Note 86

Article 182 (Clause 5) Note 86a

while in the former case it will not.

Where a defective application, instead of being returned or rejected is accepted by the Court and action taken, it has been beld that the application must be taken to have been in accordance with law.5

Where an application is rejected by the Court on the ground that it has not complied with the requirements of Order 21 Rules II to 14, it has been beld that it cannot be considered to be one in o 1

one. ^e Va reason s stage of	nce with law even thoughtious reasons bave been a eems to be that a Court the execution proceed to was not in accordance.	dvanced for this cannot reconsidings its own or	view, but the true er at a subsequent
(1908)	6 Mad 250 (251), Ramanand 31 Mad 69 (69): 17 Mad L v. Kadir Baoha Sahib, A I R 1926 Cal 1077 (1081):	our 596 : 3 Mad L	
	135 Ind Cas 15 (15) (Mad), (Party not signing and verify A I R 1920 Pat 615 (616): Sibilas Kuer, (Decree-holde order of Court.)	ing application)	bran Mahlon v. Mt.

(1922) 65 Ind Cas 120 (120) (Pat), Guru Mahadeva Ashram Prosad Sahi Bahadur v. Mahabir Suhul. (Amount of the decree and costs not shown—Held, material defect.) - - ir 599, Telait

. Lellanund. ndra am Begam V.

ricons . T D 1000 Pom 110 (110) or Tom ora re Tod (119 814, Gulappa

. Girija Kanl was accepted and acted upon by a Court does not preclude it from looking behind to see whether the decree was barred at the date of the

application.)]
6. (1931) A I R 1931 Nag 154 (155) . 134 Ind Cas 631 : 23 Nag L R 7 (F E). Gulamals v. Rajkumar Chatterys. (If the rejection Is on other grounds, the Court dealing with the subsequent application must look to the previous application itself to see whether it was in accordance with law.)

(1919) A I R 1919 Cal 466 (467) : 41 1nd Cra 220, Ishan Chandra Samus Y: Dulai Chandra De. (Amount which had been recovered in course of some previous proceedings was not correctly stated-Not inaccordance

(1935) A J R 1935 Nag 131 (192) : 31 Nag L R 333 : 156 Ind Cas 114, Hank-(1931) A 1 R 1931 Aug 1 104 [194] 31 Aug 1 R 331; 190 Ind Cas Art, Market Rank R 1 R 1931 All T22 (723); 131 Ind Cas 33, Suderhawars Prassa Narain Singh v. Palphan Dule.

(See alm (1926) A I R 1926 All 376 (376) : 93 Ind Cas 369, Fam Bahadur Singh v. Bahat Als Khan.)

fide, one class of cases bolding that it should be and another class of cases that it need not he so.3 The conflict must now be taken to have been set at rest by the decision of their Lordships of the Privy Council in Khalil Ur Rahman v. Collector of Etah,4 that it is not neces. sarv for an application to be in accordance with law that it should have been made bona fide. In that case an application for execution was made on 2nd June 1925 in respect of a mortgage decree dated 29th June 1922, praying for the sale of the mortgaged properties. The Court ordered certain copies to be filed in answer to which the vakil stated that he simply wanted in that application to get the legal representatives of the judgment-debtor brought on the record. Notices were ordered to the alleged legal representatives but were returned unserved and the decree-holder taking no further steps, the applica. tion was struck off. The decree-holder again applied on 8th July 1926 for sale of the property. On this application, the legal representatives were brought on the record, but no further steps being taken this annlication also was struck off. Their Lordships, approving of the view taken by the Full Bench of the Allahabad High Court in Kayastha Co Ltd. v. Sitaram Dubey, observed as follows.

- 2. (1926) A I R 1926 All 95 (99) . 48 All 468 . 90 Ind Cas 939. Shee Presad v. Mt. Naraus Bas
 - (1926) A I R 1926 All 376 (376) 93 Ind Cis 369, Ram Bahadur v. Rahat Als. (Bogus application)
 - (1931) A I R 1931 Bom 425 (125) . 134 Ind Cas 699, Hars Mahadev v. Yashnu Balakrushna. (1931) A I R 1931 Sind 160 (161) . 134 Ind Cas 1182 25 Sind L R 528.
- Volkart Brothers v. Achragram. 3. (1874) 22 Suth W R 512 (516) (F B), Eshan Chander Bose 1. Prannath
- (1874) 22 Suth W R 154 (155) 14 Beng L R 144n, Rohince Nundan Matter
 - v. Bhagu an Chander Roy. (1875) 24 Suth W R 459 (460), Mt Moracho Koocr v. Chutoorbhoo: Sahov.
 - (1877) 3 Cal 518 (521) 1 Cal L R 409, Unnoda Persad Roy v. Koornan Ali.
 - (1929) A I R 1929 All 625 (650) 118 Ind Cas 17 52 All 11 (F B), Kayastha Co , Ltd. v. Sila Ram Dubey
 - (1875) 23 Suth W R 327 (328), Shurut Chunder Sen v Abdool Khyr Mahmoed Mohntesur Billah. (1883) 1883 Pun Re No. 23. Baness v. Turion

 - (1878) 2 Mad 1 (3) 3 Ind Jur 208, Prabhacara Row v. Potannah.
 - (1891) 1891 All W N 148 (148), Debs Dass v Umrao Singh
 - (1890) 1890 All W N 77 (78), Halima Bibs v Nashan Bibs (1930) 131 Ind Cas 678 (679) (4B), Rupas Ras v. Murat Tewara
 - (1930) A I R 1930 All 814 (814) 128 Ind Cas 231, Ram Nath v. Ram Sahai
 - (1928) A I R 1928 Oudh 337 (338) 110 Ind Cas 701 . 3 Luck 550, Rugaya Bibi v Prag Texari (1930) A I R 1930 All 188 (189) 122 Ind Cas 179, Dharandeo Bar V. Jurala
 - Prasad (1935) A I R 1935 Nag 131 (132) SI Nag L R 333 156 Ind Cas 114, Hanu
 - man Lala Kalar v Sheenarayan Senar, (1933) A I R 1933 Sand 78 (91) 27 Sand L R 109 142 Ind Cas 459, Achray-
 - sing Ram Sing v Achragram Sahns (1934) A I R 1934 Pat 289 (229) 149 Ind Can 102, Srs Ras v Sheelens Misser.
 - 4. (1934) A I R 1934 P C 14 (16) 147 1nd Cas \$23 61 Ind 4pp 62 55 All 993
 - 5. (1929) A I R 1929 All 625 (650) 118 Ind Cas 17 52 All 11 (P R)

Article 182 (Clanse 5) Notes 86-86a

"The applications were made in accordance with the provisions of the Code of Civil Procedure, and therefore in accordance with the law applicable thereto; they were made to the proper Court. They were obviously steps-in-aid of execution and they were made in time

"To hold that it was necessary for the Court to be satisfied that the said applications were made bona fide and that the decree-holder bad the intention of proceeding to execution in pursuaoce of each of the said applications, would be to import words ioto the terms of the Article which are not to be found therein and would necessitate the Court embarking upon the difficult and in some cases the impossible task of finding the motive of the decree-bolder in making the applications."

86a, Effect of return, amendment, and rejection of application for execution. - Order 21 Rule 17 sub-rules 1 and 2 of the Code of Civil Procedure provide as follows:

"(1) On receiving an application for the execution of a decree as provided by Rule 11 sub-rulo 2, the Court shall ascertaio whether such of the requirements of Rules 11 to 14 as may be applicable to the case have been complied with; and, if they have oot been complied with, the Court may reject the application, or may allow the defect to be remedied then and there or within a time to be fixed by it.

"(2) Where an application is amended uoder the provisions of sub-rule 1, it shall be deemed to have been an application in accordance with law and presented on the date when it was first presented."

Where the application is amended, under the provisions of sub-rule 1, then the application will be deemed to be in accordance with law when it was first presented, irrespective of the question whether the defect in the application as it was first presented was a material onola (1 e. a defect by reason of which it is not possible for

Note 86a

¹a(1926) A I R 1926 Mad 260 (260, 261) . 92 Ind Cas 109, Sankaran Nair v. Ambu. (Description of property omitted.)

⁽¹⁹¹⁷⁾ A I R 1917 Mad 636 (636) . 35 Ind Cas 876, Kamalchi Ammal v.

Pitchu Iyer. (1919) A I R 1919 Mul 220 (231) 52 Ind Cas 765, Balasubramania Pillat v.

Chit Co., Yela Nidhi Ltd (1936) A I R 1936 Mad 94 (92) . 59 Mad 303 : 161 Ind Cas 93, Kenchads

Dalayya v. Sundara Narayana.

⁽¹⁹²¹⁾ A I R 1921 Pat 23 (24) 2 Pat 809: 74 Ind Cas 174, Bhagrat Praised v. Dwarla Prashad.

^{(1923) 45} Mad L Jour 7 (7) (x n c)

⁽¹⁹³⁰⁾ A I R 1930 Ou th 65 (66) : 5 Luck 459 . 124 Ind Cas 415, Drijhijas Singh v Bhagwan Dasi

^{(1910) 7} In I Cas 19 (20) (Cal), Kalanun I Singh v. Chandra Kithere Jh 1

^{(1992) &}amp; I R 1992 Pat 222 (224) : 198 In 1 Cut 91 : 11 Pat 516, Shes Gorins Ilars v. Mt. Kuthun Bann Kuer.

the Court to proceed with the application) or an immaterial one, he it does not follow from this that where an application is returned for amendment, but is not amended, the application must necessarily be considered to be not in accordance with law. In Kamachi Ammal N. Pichuk. Their Lordshires of the Hind Court of Madras observed:

"We think that an execution petition returned for amendment but not re-presented, may yet give fresh starting point for limitation. We do not consider that Order 21 Rule 17, Givil Procedure Cede, 1908, was intended to affect the construction put upon the words 'applying in accordance with law' in the Limitation Act by this Court and by other High Courts in dealing with defects in form occurring in execution applications. The Rule is an enabling one which allows certain defective applications subsequently amended to be deemed 'applications in accordance with law' with effect from the date of their first presentation."

See also the undermentioned cases2a to the same effect.

The question, then, whether such an application is in accordance with law, depends upon the answer to another question whether the defect, for the amendment of which the application was returned, was a material defect, without the amendment of which further proceedings could not be taken, or was only a formal defect. In the latter case, the application will be one in accordance with law,*

1b(1925) A I R 1925 Oudh 899 (490) 86 Ind Cas 591 28 Oudh Cas 892, Durga Prasad v Johku Ram.

(1006) 8 Cal L Jour 41 (44) (5 N) (Verification omitted)

(1930) A I R 1930 Oudh 65 (67) 5 Luck 459 124 Ind Cas 445, Drighijan Singh v Bhaguan Dass.

 (1937) A I R 1937 Mad 985 (391) I L R (1937) Mad 616 . 168 Ind Cas 561 (F B), Chidambara Nadar v Rama Nadar

(1924) A I R 1924 Pat 23 (24) 2 Pat 809 74 Ind Cas 174, Dhaquat Prashad v Dwarka Prashad.

2. (1917) A I R 1917 Mad 636 (636) 35 Ind Cas 876.

2a (1916) A I R 1916 Mad 958 (958) 82 Ind Cas 691, Narayanaswami Naidugaru v. Gantayya

(1915) A I R 1915 Mad 1201 (1204) 29 Ind Cas 16, Seshayya v Venlatasubbrah. (1933) A I R 1933 Mad 568 (569) 143 Ind Cas 611, Thirupathi Ayyangar v.

Yegnammal (Case before amendment by Act 9 of 1927)
(1918) A I R 1918 Mad 1909 (1900, 1901) 40 Mad 919 38 Ind Cas 136.

Natesa Pillas v. Ganopathia Pillas.
(1915) A I R 1915 Mad 1012 (1913), 26 Ind Cas 413, Vaditelu Pillas v.

Maruda Pillat. (1916) A I R 1916 Mad 510 (510) 27 Ind Cas 611, Mootha v. Sanlunna

Natr.

(1910) 5 Ind C15 579 (581] (C1l), Mathura Prosad v. Anurago Keer. (1916) A 1 R 1916 Mad 1155 (1156) 32 Ind Cas 816, Narayanaswami Nasdu

v. Muthalaya Venhatarutnam (See also (1889) 12 Cd L R 279 (280), Syud Mohomed v. Aledcollah.) (But see (1918) A I R 1918 Mad 401 (102) 42 Ind Cas 671, Deorcas Seshadri Iver v. Amanthase.)

3. (1892) 1892 All W N 111 (114), Madho Singh v Ears Charese Das.

(1928) A I R 1928 Mad 440 (443) . 112 Ind Cas 36, Abdul Eharira Saheb v. Lalshinanasearra. Article 182 (Ciause 5) Note 86a

while in the former case it will not.4

Where a defective application, instead of being returned or rejected is accepted by the Court and action taken, it has been held that the application must be taken to have been in accordance with law.5

Where an application is rejected by the Court on the ground that it has not complied with the requirements of Order 21 Rules 11 to 14, it has been held that it cannot be considered to be one in accordance with law even though the omission was an immaterial one. Various reasons have been advanced for this view, but the true reason seems to be that a Court cannot reconsider at a subsequent stage of the execution proceedings its own order that such an

application was not in accordance with law. (1883) 6 Mad 250 (251), Ramanandan v. Periatambs. (1908) 31 Mad 63 (69): 17 Mad L Jour 596: 3 Mad L Tim 254, Ramayyan v. Kadır Bacha Sahıb. (1926) A I R 1926 Cal 1077 (1081) : 53 Cal 664 : 98 Ind Cas 166, Pstamber Jana v. Damodar Gachart. . . . Janki Koer.] ya Nath Ghose. (List of lai v. Muthu Chettur. Sobran Mahlon v. Mi.

uply with a conditional

order of Court.) (1922) 65 Ind Cas 120 (120) (Pat), Guru Mahadera Athram Proceed Sahi Bahadur v. Mahabir Sukul. (Amount of the decree and costs not shown—Held, material defect.) 5. (1920) A I R 1920 Pat 180 (181) : 58 Ind Cas 223 : 5 Pat L Jour 599, Telau

·llanund. Begam v.

(1922) A I R 1922 Bom 118 (119) : 46 Bom 269 : 63 Ind Cas 814, Gularys Rudrappa v. Eraya Basangouda. (But see (1870) 3 Cal L. R 572 (573), Ishana Dabia v. Girija Kant Lahry. (The fact that a previous application was accepted and acted upon by a Court does not preclude it from looting

behind to see whether the decree was barred at the date of the application.)] 6. (1931) A 1 R 1931 Nag 151 (155) : 134 Ind Cas 681 : 29 Nag L R 7 (F 1). Gulamals v. Rajkumar Chatterys. (If the rejection is on other grounds, the Court dealing with the subsequent application must look to the previous application fixely to see whether it was in accordance

with law,) (1919) A 1 R 1919 Cal 466 (467) : 41 Ind Cas 220, Ishan Chandra Samus 7; Dulai Chandra De. (Amount which had been recovered in course ci some previous proceedings was not correctly stated. Not in secondance

with law) an , see o tomolin Pai Kumar, * meur! S OE SATES

(1935) A. I. R. 1935. Nag. 131 (192): 31 Nag. L. R. 333: 156 Ini I. Cas. 114, Hann-man Lala Kalar v. Skeo Narayan Sonar. (1931) A. I. R. 1931. All 722 (723): 131. Ind. Cas. 33, Sudeshawars. Prassd.

Naram Singh v. Paljhan Dube. [See alm (1926) A I It 1926 All 376 (376) : 93 Ind Cas 202, Part Bahadur Singh v. Rahat Ale Khan-

Article 182 (Clause B) Note 86a

Order 21 Rule 17 sub-rule 2 of the Code of Civil Procedure contemplates the amendment of an application before admission and registration. It gives a discretion to the Court to allow or refuse amendment of the application. If the Court nyerlooks the defects and registers the application, the questing whether the defects can subsequently be amended depends on whather the decree is or is not barred on the date of the amendment. If there is no har nf limitation, the application can be amended. as a substantive fresh application can be entertained on that date and there is nothing in the Code to prevent the Court from treating it as a fresh application.

Suppose, on the date when the defect is sought to be remedied the decree is barred by limitation. There is a conflict of opinion as to whether an amendment can be allowed in such a case. According to the Calcutta High Court on such amendment is permissible, the reason being that the Court is not empowered under the Rule to allow the amendment.9 The Madras High Court10 has held that the Court has a discretion to allow an amendment under sub-rule 1 of Order 21 Rule 17, even if the application for amendment is made after the expiry of the statutory time, the reason being that the law casts a duty upon the Court to notice the defects in the application before TO D. DE-T OF PROPERTY SOME TO SOME THE PROPERTY OF THE OR THE

Prasad

Samagas Sarkar.

1.,//----

(1910) 5 Ind Cas 532 (535) . 37 Cal 899, Chhayunessa Bibs v. Kan Basirar Rahaman. 8 (1932) A I R 1932 Pat 806 (307) : 11 Pat 506 : 139 Ind Cas 840. Brava Sunder Das v Radha Prasad Bhagat.

 (1923) A I R 1912 Fat 214 (229); 2 Pas 282; 71 Ind Cas 741, Ram Sumran Prasad v, Ram Bahadur.
 (1910) 5 Ind Cas 532 (535) 87 Cal 899, Chhayunnessa Bibr v, Rasi Basrar.
 (1914) A I R 1914 Mad 663 (661); 21 Ind Cas 782, Varaduch v, Rumara Venkata Perumal Raja Bahadur Varu. 6 , 139 Ind Cas 91, Sheogobind

: 119 Ind Cas 411, Jagannath

las 337, Salimulla Bahadur v.

(1890) 17 Cal 631 (636) (F B), Asgar Als v. Trodokya Nath Ghose, (Overruling 14 Cal 124.) (1925) A I R 1925 Cal 1048 (1050) : 85 Ind Cas 742, Abul Hasmat Ahmad

l Cas 1017.

e v. Sobausold sandana 10. (1928) A I R 1918 Mad 24 (25) : 107 Ind Cas 303. Maheshwaran Nambudri-

Article 182 (Clause 5) Notes 86a-86h admission, and if the Court or its officer had done such duty properly, the defects could have been remedied within time. The Bombay High Court has expressed the view that if the application for execution is within time, but the application for amendment is made after the twelve years have expired, the application for amendment should not be straightway rejected but must be considered on its merits, and that the matter being in the discretion of the Court, it would depend upon the nature of the amendment whether it should or should not he allowed. 11 The High Courts of Allahabad. 12 Lahore 13 and Patna, 14 and the Judicial Commissioner's Court of Peshawar15 have also allowed the defects to be remedied though the decres was barred on the date of the amendment.

Where the Court grants time for amendment under the provisions of sub-rule 1 of Rule 17 of Order 21 of the Code of Civil Procedure. it can subsequently enlarge the time so granted.16

86h. Withdrawal of application. - Before the date of decision of their Lordships of the Privy Council in Thakur Prasad v. Fakir Ullah, there was a conflict of opinion as regards the effect of withdrawal of an execution application. According to one view, the application withdrawn was to he treated as non-existent and the question of limitation with regard to a subsequent execution application was to be determined as if the first application had never been made at all 2 According to the other view, the application which was withdrawn was not to be treated as a nullity, but would furaish a fresh starting point of limitation.3 The decision of the Privy Council

11. (1937) A I R 1937 Bom 365 (370): 170 Ind Cas 877: I L R (1937) Bom C91, In se Janks Prasad Poddar. (1938) A I R 1933 Bom 405 (407, 403) · I L R (1938) Bom 708 : 177 Ind Cas

989, Mahomed Bhai v. Dawoodbhas & Co.

12. (1898) 20 All 478 (480) 1893 All W N 123, Jawat Dube v. Kali Charan

(1693) 1893 All W N 112 (113), Ajudharam v. Muhammad Munir. [See (1905) 2 All L Jour 367 (369), Muhammad Ras v. Ali Sajjad.] 13 (1920) A I R 1920 Lah 122 (122) : 55 Ind Cas 16, Ganesh Das v. Fatteh

Chand, 14. (1932) A I R 1932 Pat 222 (223) 11 Pat 546 : 138 Ind Cas 91, Sheogobind Ram v Mt. Kishunbansi Kuer.

15. (1934) A I R 1934 Pesh 40 (42) . 152 Ind Cas 443, Ahmad Ali v. Mt. Falima Sultan.

16. (1882) 8 Cal 479 (481) : 10 Cal L. R 519, Eqmini Mohun v. Gopal. (1916) A I R 1916 Cal 356 (357) : 34 Ind Cas 625, Gopal Proshad v. Rajendra Lal.

Note 86h

- 1, (1895) 17 All 106 (111, 112) . 22 Ind App 44: 5 Mad L. Jour 8: 6 Sar 526
- 2. (1885) 7 All 359 (361, 362) : 1885 All W N 51, Kifayat Ali v. Ram Singh. (1987) 10 All 71 (78) 1888 All W N 1, Sarju Prasad v. Sita Ram.
 - (1881) 6 Bom 681 (683), Pirjade v. Pirjade. (1888) 1888 All W N 272 (273), Mahlab Kuar v. Shamsundar Lal.
- 3. (1985) 10 Bom 62 (65), Tarachand Megras v. Kashmath Trimbal. (1887) 11 Bom 467 (469) · 1887 Bom P J 28, Shankar Bisto Nadgir v. Narsinghrao Ramchandra,
 - (1910) 8 Ind Cas 833 (831) (Cal), Musaraf Ali v. Amir Jan Bibec.

in Thakur Prasad's case' set the conflict at rest by upholding the view that the withdrawal did not prevent the application from furnishing a fresh starting point

Article 182 (Clause 8) Notes 86b-87

Alter the amendment of 1927, the starting point under clause 5 of the Article is the date of final order on the application. An application withdrawn without leave can only be dismissed, and the dismissal will be a final order on the application which will give a Iresh starting rount of time.

87. "Proper Court"—General.—Under Explanation II, "proper Court" has been defined as meaning the Court whose duty it is to execute the decree or order. This necessarily implies that unless a Court has the jurisdiction to execute the decree or order, it will not be a proper Court within the Explanation, as a Court cannot be under a duty to do a thing which it has no surrelation to do

The word "execute" in Explanation II would seem to be used in a clear sense as including the power to entertain an upplication for execution, so that an application for execution made to a Court which can only entertain the application and transfer it to unother Court for execution, but caunot itsell proceed to execute the decree in the manner asked for, may be an application made to a "proper Court,"

Further, if the application contemplates execution in any particular manner, the Court that is competent to entertain an application for execution in that manner, will alone be a proper Court within Explanation II. Thus, in Maharaja of Bobbili v. Sri Raja Narasaraju Peda Baliara Simhulus, a decreo passed by a Court at V was transferred for execution to a Court at P. The latter Court attached the property of the judgment-debtor which was within its jurisdiction, in execution of the decree. Then, before the Court at P sent to the Court at V a certificate under Section 41 of the Civil Procedure Code reporting the result of the execution, an application was made to the Court at V for sale of the property attached. It was held by the Privy Council that the application was not made to a proper Court within the meaning of clause 5.

Under clause 5, both an application for execution and an application to take a step-in-aid of ovecution must be made to a proper Court, in order to save limitation under the clause. Hence, in view of the definition of the expression "proper Court" in Explanation II, oven an application to take a step-in-aid al execution must be made

Note 87

 See (1874) 21 Suth W R 410 (411), Problash Chunder Labory v. Poorno Chunder Roy (Under Article 167 of the Act of 1871, the term was defined as Court whose duty it was, by transfer or otherwise, to execute the decree)

The state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the s

8. (1916) A I R 1916 P C 16 (19): \$9 Mad 640; 43 Ind App 239: \$5 Ind Cas 681 (P C).

Article 182 (Clanse fi) Notes 87-88 to a Court whose daty it is to execute the decree. 3a

In the undermentioned case⁴ it was doubted by Marten, J., of the Bombay High Court whether an application for execution made against a talukdar without a certificate under Section 29 E of the Gujerat Talukhdars' Act (1888) is one made to a proper Court, because in the absence of such certificate there is no duty resting on any Court to execute the decree. It is submitted that the learned Judge has not applied a correct test in determining whether a Court is a proper Court within the meaning of Explanation II, Clause 5 clearly makes a distinction between the question of an application being in accordance with law and that of the application being presented to the proper Court. Hence, the definition in Explanation II must be taken to refer to a Court whose duty it is to execute the decree or order of an application in accordance with law is presented to it. A defect on account of which no Court is competent to deal with an application must, it is conceived, he held to he a matter which makes the application not one in accordance with law and not a defect which makes the Court to which the application is presented not a , proper Court.

The expression "Court whose duty it is to execute the decree" occure also in the Civil Procedure Code, Order 21 Rule 2. Hence, it is conceived that decisions hearing on the interpretation of the expression in the above provision may also be referred to for the purpose of detormining what is a "proper Court" as defined in Explanation II.

88. Execution beyond local jurisdiction - Application to Court passing decree, if one made to proper Conrt. - Even in cases where the property sought to be proceeded against is outside . the local limits of the jurisdiction of the Court which passed the decree, or the judgment-debtor resides outside such limits, the Court which passed the decree has jurisdiction to entertain an application for execution and hence is a proper Court within the meaning of Explanation IL¹

Sa. See Note 101 infra.

Note 88

- 1. (1897) 2 Cal W N 415 (417), Rama Nath Sen v. Gouri Sankar. (Application for transfer of decree.)
 - (1923) A 1 R 1923 Oudh 9 (12) : 69 Ind Cas 660 : 26 Oudh Cas 71, Sheo Ram v. Ram Bharosey.
 - (1936) A I R 1936 Rang 271 (274) : 14 Rang 550 : 163 Ind Cas 403, Arjundas Bisumalal v. U Ka Ya. (Application for execution in respect of property outside jurisdiction.)
 - (1931) A I R 1931 Cal 312 (317): 59 Cal 832: 192 Ind Cas 149, Sreenath
 - Chakratarthi v. Priyanath Bandopadhya. (Do.) tire in .

^{4. (1918)} A I R 1918 Bom 73 (78): 43 Bom 44: 47 Ind Cas 726, Hargorina Fulchand v. Naja Sura.

Artiole 182 (Clause 8) Note 89

89. Transfer of decree to another Court for execution -Jurisdiction of transferring Court .- In Maharnan of Bobbili v. Sri Rain Nurasaraju Peda Baliara Simhulu Buhudur,1 a money decreo was passed by a Court at V. The decrea was transferred for execution to the Court at P. The latter Court attached in execution of the decree certain property belonging to the indement-debtor which was within its jurisdiction. Then, before the decree was returned to the Court at V with the certificate of non-satisfaction by the Court at P. an application was made to the former Court for sale of the property that was within the jurisdiction of the Court at P and had been attached by such Court. In holding that the application was not made to a proper Court, the Privy Conneil observed as follows:

"As the decree of the 5th April 1904 had by order of the Court of the District Judge been sont on the 30th September 1904 to the Court of the Munsif of Parvatipur for execution by tha latter Court, and as the copy of the decree with the non-satisfaction certificate was not returned to the Court of the District Judge until the 3rd August 1910, and as the petition of the 13th December 1907 was for execution of the decree by sale of the immovable property of the respondents which was within the local limits of the jurisdiction of the Mnnsif's Court, their Lordships having regard particularly to Sections 223, 224, 228 and 230 of the Code of Civil Procedure. 1882, are satisfied that when that petition of the 13th December 1907 was presented to the Court of the District Judge, that Court was not the proper Court to which the application to execute the decree hy sale of the immovable property which had been attached by the Court of the Munsif should have been made, and that the proper Court to which that application should have been made was the Court whose duty it then was to execute the decree so far as it could be executed by that Court "

There is a conflict of judicial opinion about the interpretation of the above ruling of the Privy Council. According to some decisions,

Note 89

⁽¹⁹²⁹⁾ A I R 1929 Rang 95 (95): 116 Ind Cas 474, Kathurasan Chettyar v. Ma E

to the

although

Court's jurisdiction.)

⁽¹⁹³⁴⁾ A I R 1934 Pat 192 (194): 13 Pat 21: 155 Ind Cas 769, Chandan Mal Marwars v. Shib Prasad Singh.

⁽¹⁹³⁶⁾ A I R 1936 Cal 267 (268): 162 Ind Cas 777, Amarendra Nath v. Balas Chand.

⁽But see (1926) A I R 1926 All 95 (97): 48 All 458; 90 Ind Cas 988. Sheo Prasad v. Mt. Narayans Bas.1

Article 182 (Clause 8) Note 89

the above ruling lays down that till the return of the decree with the certificate of non-satisfaction by the Court to which the decree has been transferred, the Court which has passed the decree has no jurisdiction to execute the decree or to entertain an application for the execution of the decree. But according to other decisions, the above ruling of the Privy Conneil must be confined to the pecular facts of the case and must be held to lay down only that the Court passing the decree cannot entertain an application for the sate of the property which has been attached by the Court to which the decree has been transferred, and not that in every case the Court passing the decree will have no jurisdiction to execute the decree till the certificate of non-satisfaction is sect by the Court to which the decree has been transferred.

It is submitted that the latter view is correct. Hence, where Court A passes a decree and transfers it for execution to Court B an application made to the former Court for transfer of the decree to

- (1933) A I R 1933 Cal 906 (908): 60 Cal 1176: 149 Ind Cas 17, Jatendrokumar Das v. Mahendrachandra Banskya.
 - (1939) 43 Cal W N 185 (186), Ram Kishan Ram Bhakat v. Satya Narain.
 - (1934) A I R 1934 Lab 723 (729): 152 Ind Cas 123: 16 Lab 80, Rulia Ram
 - (1931) A I R 1931 Lab 14 (14): 130 Ind Cas 521, Dswanchand v, Rallia Ram.
 - (1925) A I R 1925 Lab 283 (235): 78 Ind Cas 241, Firm Sheru Mat China Mat v. Firm Hira Lat Anant Ram.
 - (1918) A I R 1918 Mad 580 (582): 40 Mad 1989; 42 Ind Cas 204 (F E), Prerce Leshe & Co. Ltd. v. Perumal.
 - (1925) A I R 1925 Oudh 492 (493) : 28 Oudh Cas 169: 85 Ind Cas 455, Mahomed Shakr v. Jugal Kishore.
 - (1923) A I R 1923 Pat 384 (394): 2 Pat 247: 74 Ind Cas 608, Jnanendra Nath Ghose v. Jogundra Narain Sinha.

See also the following cases which were decided before the above Prity Council decision and which proceeded on the view that the transferred Court is do purisdiction to execute the decree before the return of the decree with the certificate of non-valisfaction by the Court to which the developed has been transferred;

(1882) 1882 All W N 171 (171), Budht Bubi v. Indar Keer. (A second application by the decree-holder to the original Court to give him a second certificate of transfer, the first being still subsisting and operative, would not be an application made in accordance with law, nor was it made to the proper Court.)

(1900) 1900 All W N 88 (89), Har Sahai v. Sham Lal. (Do.)

- 3. (1935) A I R 1935 Cal 99 (100) : 154 Ind Cas 731, Rajani Kanta v. Golam Makuddun.
 - (1935) A I R 1935 Lah 465 (473): 157 Ind Cas 488 (F B), Kanti Naram v. Madan Gopal.
 - (1930) A I R 1930 Lah 199 (201): 121 Ind Cas C8, Hanuman Baksh v. Chunna Mal.
 - (1928) A I R 1928 Mad 403 (494): 110 Ind Cas 899, Mehadum Beg Sahib v. Muhammad Meera Sahib. (A I R 1922 Bom 359, Dissented from.)
 (1937) A I R 1937 Nag 305 (308): I L R (1937) Nag 440: 173 Ind Cas 51,
 - Thakur Vishuanath Singh v. Mahabir Prasad. (1939) A I R 1939 Pat 144 (145): 17 Pat 617: 180 Ind Cas 311, Firm

Dwarladas Gobindram v. Firm Saligram Rekhraj. See also cases in Foot-Notes 4 and 5 below. another Court. or for the recall of the decree to itself. is an application made to a proper Court.

Where an application for execution is made to the transferring Court before the transfered Court sends the certificate of non-satisfaction but such certificate is sent subsequently, it was held in the undermentioned cases that the defect is not cured and the application must be regarded as not made to the proper Court. But if the yiew that the transferring Court continues to have jurisdiction to execute the decree even after the transfer of the decree is accepted as correct, the above question cannot arise,

Even assuming that once a decree has been transferred to another Court for execution the Court which passed the decree has no purisdiction to execute it until the decree comes back to it in some way, it has been held that where a Court which passed a decree has ordered it to be sent to another Court for execution but the decree has not been actually transferred in accordance with the order, the Court which passed the decree continues to be the "proper Court" for receiving applications for execution.7

90. Transfer of decree to another Court - Jurisdiction of transferee Court. - Under Section 38 of the Civil Procedure Code. a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution Hence, a Court to which a decree has been sent for execution is a "proper Court" within the meaning of Explanation II. The purisdiction of such Court to execute the decree continues until it sends (under Section 41, Civil Procedure Code) to the Court which passed the decree the certificate reporting the result of the execution by it nr until the execution proceedings are withdrawn or transferred from it. Hence, an application for execution or to take a step-in-aid of execution made to the transferee Court at any time before such certificate is sent or the execution proceedings are withdrawn or transferred from the transferee Court,

^{4. (1938)} A I R 1938 Mad 113 (115) : I L R (1938) Mad \$26 : 176 Ind Cas 753. Muthu Rama Redds v. Motslal Daga

⁽¹⁹²⁸⁾ A I R 1928 Mad 493 (494) : 110 lnd Cas 829, Mahadum Ben Sahib v. Md Meera Sahib.

⁽¹⁹²⁷⁾ A 1 R 1927 Nag 367 (367), Gound v. Lazman,

⁽¹⁹²⁸⁾ A 1 R 1928 Nag 29 (30): 23 Nag L R 126: 101 Ind Cas 279. Gound v. Larman.

^{5. (1939)} A 1 R 1939 Pat 144 (146) . 17 Pat 617 . 180 Ind Cas 311. Furm Dwarkadas Gobindram v. Pirm Saligram Rekhraj.

^{6, (1931)} A I R 1931 Lah 14 (14): 130 Ind Cas 521, Dewan Chand v. Rallia Ram. (Confirmed on Letters Patent Appeal in A I B 1934 Lah 728.)

⁽¹⁹³³⁾ A 1 R 1933 Cal 906 (908): 60 Cal 1176: 149 Ind Cas 17, Jatindra Kumar Das v Mohendra Chandra Banshua. (But see (1926) A 1 R 1926 Lah 113 (114): 89 Ind Cas 958, Firm

Hira Lal-Anant Ram v. Firm Shern Mal-China Mal.1 7. (1922) A 1 R 1922 Pat SOI (303): 1 Pat 328: 65 Ind Cas 332. Ramachandra

Marwars v. Krishana Lal Marioars.

⁽¹⁹³³⁾ A I R 1933 Sand 78 (80) : 27 Sand L R 109 : 142 Ind Cas 489. Achra i Sing Ram Sing v. Achragram Sahni.

Article 182 (Clause 5) Notes 90-91 is an application made to a "proper Court." But, where the transferce Court has returned the decree to the Court by which it was passed, the transferce Court has no longer any jurisdiction to execute the decree and an application made to it will not be one made to a proper Court. In some decisions, however, the view has been expressed that the return of the decree by the transferce Court does not make it anytheless a Court to which the decree has been sent for execution within the meaning of Section 38 of the Givil Procedura Code and therefore, such Court continues to he a "proper Court" notwithstanding the return of the decree. It is submitted that the view is not correct.

It has been hold that where a decree has been ordered to be transferred for execution to another Court, the latter Court is competent to entertain an application for the execution of the decree though it has not actually received the copy of the decree at the time of the application.

91. Change in territorial or pecuniary jurisdiction of Conte which passed the decree—Effect.—It is a general principle of law that when once a Contr has jurisdiction to entertain a suit, it does not ordinartly lose such jurisdiction by reason of subsequent erents. On this principle, where a decree is passed in respect of certain property and subsequently the area in which the property is situated is transferred to the local jurisdiction of another Court, the Court which passed the decree can entertain an application for the execution of the decree. Hence, an application for execution or to

Note 90

(1929) A I B 1929 Bom 418 (420) : 53 Bom 844 : 123 Ind Cas 507, Fatechand

Court.)

- (1932) A I R 1932 Pat 286 (287): 11 Pat 518: 189 Ind Cas 843, Seshaiyer Rajamannar Iyer v. Madan Mohan Palnaik.
- (1909) 1 Ind Cas 57 (61) (Cal), Manorath Das v. Ambica Kanta Bose. (The mere striking off of an execution proceeding does not indicate its final determination).
- (1926) A I R 1926 Mad 1209 (1209): 93 Ind Cas 455, Mir Mahomed Nooruilla Sahib v. Hasarath Kibulai Sayyad Ghulam Ghouse Sha Sahib Kadiri.
- 3. (1888) 1833 Pun Re No. 168, Harbhaj Rai v. Makand Lal.
- (1922) A I R 1922 Nag 21D (212): 63 Ind Cas 657: 18 Nag L R 178. Indra Ray Supph v. Murad Khan. 4. (1932) A I R 1933 Mad 627 (628): 56 Mad 692: 144 Ind Cas 923, Modell
- (1933) A I R 1933 Mad 627 (628): 56 Mad 692: 144 Ind Cas 923, Models Ademma v. Lanka Venkata Subbayya. (85 Mad 589, Followed: A I R 1929 Mad 496. Dissented from.)

take a step-in-aid of execution, made to the Court which passed tho decree in such a case would be an application made to a proper Court within Explanation II.2 As the Court which passed the decree does not cease to have jurisdiction in such cases, the Court to whose sursidiction the area is transferred does not become the Court which passed the decree under Section 37 of the Civil Procedure Code, and hence, an application made to the Court to whose jurisdiction the area is transferred is not made to the proper Court.3

A decree, say, for Rs 1500, is passed by a Court whose presiding officer has purisdiction to try spits apto Rs. 2000. He is succeeded by an officer who is invested only with inrisdiction to try suits upto the value of Rs 1000. An application for execution made to the successor is one made to a proper Court, the reason being that in such circumstances the Court does not cease to have purisdiction to execute the decree passed by it 4

- 92. Court passing decree ceasing to exist Effect. Where the Court by which the decree was passed has ceased to exist, the application for execution may be made to the Court which, if the snit had been instituted at the time of making the application, would have jurisdiction to try the enit. Hence, such Court would be a "proper Court" within the meaning of Explanation II.1 (See Civil Procedure Code, Sections 37 and 38.)
- 93. Appeliate Court. It is the duty of the Court of first instance to executo a decreo. So, an application made to a Court to which an oppeal against the decree has been preferred is not one
 - 2. (1920) A I R 1920 Mad 427 (436): 42 Mad 821: 53 Ind Cas 213 (F B), Seens Nadan v. Muthuswamy Pillas.
 - (1925) A I R 1925 Bom 414 (414) : 89 Ind Cas 87, Jagannath Nathu v. Ichharam Naroba Vani.
 - (1880) 6 Cal 513 (515, 516, 519) : 7 Cal L R 521 : 5 Ind Jur 414, Luchman Pundeh v. Maddan Mohan Shye. (See (1906) 30 Mad 537 (539, 540) : 17 Mad L Jour 417 : 2 Mad L Tim 456, Panduranga Mudalier v. Vythilinga Reddi

Maruas 1 mas.

- (1917) A I R 1917 Mad 257 (258): 35 Ind Cas 237, Penugonda Rattan v. Korasika Thata.
- (1918) A I R 1918 Mad 401 (401) : 42 Ind Cas 671, Doorvas Seshadri Iyer v. Ananthayee.
- (1914) A I R 1914 Mad 162 (166, 168) . 22 Ind Cas 899 : 37 Mad 462, Subbiah Naicker v. Ramanathan Chettiar.
- 3. (1935) A I R 1935 Mad 935 (935) : 158 Ind Cas 811, Palani Velu v. Somasundaram Pillas.
- 4. (1933) A I R 1933 Cal 684 (687): 149 Ind Cas 1024, Abdus Sattar v. Mohini Mohan Das.
 - (1916) A I R 1916 Pat 3 (3) -39 Ind Cas 63: 9 Pat L Jour 118, Iswars Prasad Singh v. Farkat Hussain.

Note 92

1, (1931) A I R 1931 Cal 312 (316) . 58 Cal 832 . 132 Ind Cas 149, Sreenath Chakravarts v. Priyanath Bandopadhya.

Article 182 (Clause 5) Notes 91-93 Article 182 (Clause 5) Notes 93-95 made to a proper Court. See also Note 105 infra.

- 94. Temporary Court, decree passed by. A Court is established temporarily for a period of one year. The Court passes a decree during that year. After the expiry of the year, the Court is continued for a further period. In such a case, even with regard to an application for execution made after one year from the establishment of the Court, such Court is the "proper Court" to which the application should be made. The reason is that the Court does not cease to be the "Court which passed the decree" merely because the period for which it was originally established has expired.\(^1\)
- 95. Court in Native State.—In Pierce Leslie and Co., Lid. v. Perumal.\(^1\) the question arose as to whether an application made to a Court in British India to send to a Court in a Native State (hetween which and the British Government there existed a reciprocal arrangement for the execution of each other's decrees) the necessary papers to enable the latter Court in execute a decree passed by the Court in British India, was an application to take a step-in-aid of execution. It was held by a Full Bench of the Madras High Court that such an application was not one to take a step-in-aid of execution. In giving reasons for the decision, Wallis, C. J., observed as follows:

"First with regard to classe 5 in column 3: an application to the Travancore (the Native State in question) Court to execute the decree of a British Court under powers cooferred upon it by the Legislative anthority in Travancore would not, io my opinion, be an application "in accordance with law to the proper Court for execution" within the meaning of the Article so as to create a fresh starting point for the execution of the decree hy the executing Court in British Iodia. The proper Court, in my opinion, for such an application is the executing Court under the law of British India, which, as already shown, is not the Travancore Court. The Limitation Act extends only to British India and has no operation proprio vigore in Travancore. It prescribes periods of limitation as to the filing of suits and the execution of decrees in British India, and when it makes an application in accordance with law to a proper Court a fresh starting point, it must be taken to mean an application in accordance with the provisions of the law in British India to he found in the Code of Civil Procedure to which the Article refers or elsewhere. It cannot have been the intention of the Legislature

Note 93

 ^{(1913) 21} Ind Cas 639 (641) (Mad), Kelu Nair v. Meenakshi. (Decision bearing on Civil Procedure Code, O. 21, R. 2.)

Nute 95
1 (1935) A I R 1935 Mad 849 (849, 880) - 58 Mad 1009 : 159 Ind Cas 835,
Ramanathan Chettar v. Muthawan Chettar.

Note 95 1. (1918) A I R 1918 Mad 560 (584) : 40 Mad 1069 : 42 Ind Cas 294 (F B).

Article 182 (Clause 5) Notes 95-96

to make an application for execution to a Court in a foreign State, under the law of that State and governed by the law of limitation there in force, a fresh starting point under our Limitation Act for the execution of our own decrees in our own Courts. If this he so, I am equally of opinion that an application to a British Court to take a step-in-aid of the execution by a Travancore Court of the decree of a Court in British India would not be an application to take some step-in-sid of the execution of the decree within the meaning of clause 5 of the Article."

The opinion above expressed, viz. that a Court in a Native State cannot he a proper Court within the meaning of clause 5 was, however, dissented from in a later ruling of the same High Court3 in which it was held that an application made to a Court in a Native State for transmission of papers to a British Indian Court to enable the latter Court to execute a decree passed by the Court in the Native State, was an application to take a step-in-aid of execution capable of saving limitation under clause 5. The view taken was that the question whether the application to the Court in the Native State was an application according to law made to a proper Court must be determined with reference to the law in force in the Native State. The earlier Full Bench decision in Prerce Leslie and Co.'s case! was distinguished on the ground that in that case, the question was with regard to an application to a British Indian Court for transmission of papers to a Court in a Native State, whereas in the later case the question was with reference to an application to a Court in a Native State for transmission of papers to a Court in British India.

The Bombay High Court has also proceeded on the view that a Court in a Native State may he a proper Court within the meaning of Explanation II. Thus, it has been held that where a decree passed hy a Court in a Native State (as to which action has been taken by the Government under Section 44 of the Civil Procedure Code and which is executable by Courts in British India), is transferred for execution in British India, proceedings before the Court in the Native State must be held to be proceedings taken before a "proper Court" within the meaning of Explanation II so as to save limitation nnder clause 5.3 Similarly, it has been held that where a decree passed by a Court in British India has been transferred for execution to a Court in a Native State, an application to the Court in the Native State for the return of the decree to the Court in British India is an application to take a step-in-aid of execution and will cave limitation under clause 5.4

96. Application to Collector. - A Collector or Tabsildar enfor. cing a decision of an Assistant Registrar of Co-operative Societies 2. (1923) A I R 1923 Mad 72 (73,74): 45 Mad 1014 . 69 Ind Cas 932, Sringrasa Iyengar v. Narayana Ban.

^{3. (1921)} A I R 1921 Bom 256 (257): 59 Ind Cas 747: 45 Bom 453, Prabhulingappa v. Gurunath Balası.

^{4. (1929)} A I R 1929 Bem 418 (420): 53 Mad 844: 123 Ind Cas 507, Falechand v. Jstmal.

Article 182 (Clause 5) Notes 96-98

under the rules framed under the Co-operative Societies Act is not a Court and an application made to him does not save limitation for execution of the decision by a Civil Court. Similarly, an application made to the Collector to enforce an award under Section 59 subsection 1 clause (h) of the Bombay Co-operative Societies Act, 7 of 1925, is not one made to a Court and cannot save limitation under clause 5.2

A decree for salo on a mortgage was passed in favour of A. B. the holder of a money decree against the same judgment-debtor, attached the mortgaged property. The money decree was transferred to the Collector for execution. A. the mortgage decree-holder, applied to the Collector praying that the property should be sold subject to his lien. It was held that the application was not one made to the proper Court as the Collector was not a Court whose duty it was to execute the mortgage decree.3

See also the undermentioned case.

97. Insolvency Court, application to .- An application to an Insolvency Court under Section 28 sub-section 2 of the Provincial Insolvency Act of 1920 for leave to execute the decree against the insolvent is not an application made to the proper Court within the meaning of Explanation II. The mere fact that the presiding officer of the Insolvency Court and the Court which is entitled to execute the decree is one and the same person will not make the two Courts the same so as to make the application to the Insolvency Court one to the Court entitled to execute the decree.1

98. "Proper Conrt"-Other illustrative cases.-A Conciliator appointed under the Dekkhan Agriculturists' Relief Act of 1879 is not a Court and so an application for execution made to him does not save limitation nuder clanse 5.1

A decree was passed by an Additional Mnnsiff of a certain place. An application for execution was made to the principal Munsiff of the place. It was held that it was made to a proper Court as the Courts of the two Munsul's were the same.3

Note 96

- 1. (1936) A I R 1936 Mad 150 (151): 59 Mad 257: 150 Ind Cas 520, Abdul Razak Sahib v. Kilpatti Co-operative Society
- 2. (1938) A I R 1938 Bom 424 (425) : 177 Ind Cas 897, Maratha Co-operative Credit Bank of Dharwar v. Keshav Trimbak Hunde.
- 9. (1933) A I R 1933 Oudh 564 (566): 146 Ind Cas 805: 9 Luck 273, Tillo
- Singh v. Tirbhuwan Singh. 4. (1882) 1882 Pou Re No 190, Basawa Mal v. Sirdar Amar Singh. (An
 - application to any Revenue Officer, other than the Court passing the decree, to give effect to the agreement intended to modify the decree of a Civil Court, is not one made to a proper Court.)

Note 97

- 1. (1934) A I R 1934 Mad 392 (894) : 57 Mad 808 : 150 Ind Cas 118, Carschan v. Kunhamu.
 - Note 98
- 1 (1891) 6 Bom 81 (32), Manchar v. Gebiappa. 2. (1934) A I R 1934 Pat 199 (199) : 151 Ind Cas 375 : 13 Pat 5, Manoge Lal Sah v. Jag Sah.

See also the undermentioned cases.3

99. "Application to take some step-in-sid of execution."—
Under clause 5 of the Article, the person entitled to the execution
of the decree or order gets a fresh starting point not only from the
date of the final order on an application for execution, but also from
the date of the final order on an application to take a step-in-aid of
execution of the decree In order, however, that the decree-holder
may get a fresh starting point under the latter head, it is essential
that—

- The step asked for should be in furtherance of execution of the decree. (See Note 100.)
- The application must be in accordance with law and to the proper Court. (See Note 101.)
- The step must be one to be taken by the Court. (See Note 102.)
- 4. There should be an application for such step. (See Note 103.)
- 5. The stop asked for must be in aid of a British Indian Court
 (See Note 107.)
- The step must be with reference to the decree sought to be executed and not to some other matter. (See Note 108)

100. The step must be in furtherance of execution. — The words "step-in-aid" must be liberally construed. But it is essential that the step contemplated should be in furtherance of the execution of the decree. Unless therefore the step asked for advances.

3. (1918) A I R 1918 Low Thur 103 (1903) + 42 Ind Cas 100, Curpon Chetty and Makalingam, Scut against A-Attachment before judgment—Attachment removed on B executing a bond as surety for the decree amount.—Sout then transferred to another Court and decreed by such Court.—Application for execution against surety to latter Court not one made to proper Court.—The retwon apparently is that as the bond instituted, that Court was the proper Court wherein to apply for execution against the surety)

(1929) A I R 1929 Mad 787 (789) 119 Ind Cas 398, Goundarao v. Jagan-nadham (Additional District Munist ordered by proceeding under Madras Civil Courts Act, S II, not to receive execution applicationa—Decree by Additional District Munist—Execution applications filed in Principal District Munist's Gourt are steps-in-ad.

Note 100

- (1915) A I R 1915 Mad 314 (315) 25 Ind Cas 58, Descredd: Yellamander v, Chinna Pitchiah.
 - (1936) A I R 1936 Mad 11e (119) 159 Ind Cas 544: 59 Mad 424, Union Board, Pentapadu v. Srimi asacharyulu,
- 2 (1903) 30 Cal 761 (772) . e Cal W N 251, Trylokhyanath Bose v Jyot, Prokash Nands
 - (1936) A I R 1936 Mad 118 (119) 159 Ind Cas 544 59 Mad 424, Union Board, Pentapadu v. Srimi asackaryulu.
 - (1931) A I R 1931 Cal 719 (725) 184 Ind Cas 922 59 Cal 760 (F B), Amar Krishna v. Jagat Bandhu
 - (1896) 22 Bom 340 (343), Bapuchand v Mugutrao.
 - (1889) 12 All 399 (403) . 1890 All W N 125 (PR), Sujan Singh v. Hira Singh.
 - (1937) A TR 1937 Lah 404 (407) 173 Ind Cas 185, Jodh Singh v. Bhagwan Das Nanak Chand

Article 182 (Clause 5) Notes 98-10 Article 182 (Clause 5) Note 100 or furthers execution of the decree to some extent, it cannot be beld to he a step-in-aid of execution. The question whether a particular proceeding is, or is not a step-in-aid of execution depends largely upon the circumstances of the particular case. If the facts show that the proceeding has the effect of facilitating or advancing the execution to any extent or removing some obstacle from the way of execution, it may well be regarded as a step-in-aid of execution.

There is a difference of opinion as to whether, in order to constitute a step a step-in-aid of execution, it is necessary that an execution application should already he pending, which it is intended to be sided. In Chowdhry Paroosh Ram Das v. Kali Puddo Banerice,5 it was held that an application for execution is an application to set the Court in motion to execute a decree in any manner prescribed by law, and that, having so set the Court in motion, "any further application during the continuance of the same proceeding is an application to take some step-in-aid of execution within the terms of clause 4 in the last column of Article 179 Schedule 2 of the Limitation Act." In Kuppusami Chettiar v. Rajagopala Iyer6 it was observed . "A man cannot be said to take come step in aid of a petition which has not heen initiated." In Abdul Karim Saheb v. Lakhsmanaswami,' it was held that apart from a few exceptions, an application to take a step-in-aid of execution necessarily presupposes a pending application for execution. See also the undermentioned cases to a similar effect. The general trend of opinion, however, including that of the High Court of Madras, is that it is not necessary that an application for execution should be pending before an application can be regarded as one to take a eten-in-aid of execution.9

- (1931) A I R 1931 Lah 81 (62): 131 Ind Cas 100 · 12 Lah 153 (F B), Ghanaya Lal v. Nathu Ram.
 - (1892) 20 Cal 255 (289), Abdul Hussem v. Fasilun. (Application by decreholder for release of portion of attached property and striking of an execution case is not a step-ln-aid.)
 - (1911) 10 Ind Cas 182 (183) · 14 Oudh Cas 124, Juggi Lat v. Ganga Prasad.
 (Ordinary applications supplementary to an application for execution are not in themselves applications to take steps-in-aid.)
- 4. (1932) A I R 1932 Outh 148 (149): 137 Ind Cas 768: 7 Luck 590 (F B), Ram Bharose v. Ramman Lai.
- 5. (1889) 17 Cal 53 (57),

rang Ram.

- 6. (1922) A I R 1922 Mad 79 (81): 70 Ind Cas 324: 45 Mad 466.
- 7. (1928) A 1 R 1928 Mad 440 (444) : 112 Ind Cas 36.
- 8 (1919) A I R 1919 Mad 220 (221): 52 1nd Cas 765, Balasubramania v. Chil Company Yela Nidhi Ltd.
 - (1925) A I R 1925 Mad 703 (704): 87 Ind Cas 989, Balagurusami v. Gurusugami.
 - (1926) A I R 1926 Mad 1178 (1182): 98 Ind Cas 156: 50 Mad 49, Krishna Patlar v. Sitarama Patlar.
- 9. (1938) A I R 1938 Nag 191 (192) : 174 Ind Cas 249, Tanba Yadorao 7. Chandrashankar. (1938) A I R 1938 All 210 (211) · I I. R 1938 All 342 : 175 Ind Cas 136 :
 - Latafat Als Khan v. Kalyan Mal. (1917) A I R 1917 Pat 654 (655) . 39 Ind Cas 101, Mt. Phul Koeri v. Boj-

Article 182

(Clause 5)

Notes 100-101

Where the execution of the decree is itself barred by limitation. there can he no step-in-aid of execution. As stated by their Lord. ships of the Calcutta High Conrt, "a step-in-aid of execution can only he taken in the course of an execution proceeding which is pending or capable of being kept alire, and there can be no step-inaid of execution where the execution itself is already barred."10

101, Application for step-in-ald must be one in accordance with law and to the proper Court. - The phrase "in accordance with law" is adjectival, not only to the words "to the proper Court for execution," hut also to the words "to take some step in aid of execution" In Bhagican Jethiram v. Dhondi,1 the High Court of Bomhay observed: "We think that ordinary syntax would treat the phrase as adjectival to both and that the reason of the law would acquiesce in this view of the meaning." See also the undermentioned cases2 to the same effect. As to the meaning of the words "in accordance with law," see Note 52, ante.

The epplication for step-in-aid must also, in order to save time, he made to the proper Court 3 Where a decree-holder remitted by postal money order to the Superintendent of Jail, subsistence allowances necessary for the detention of the judgment-debtor in iail, it was held by a stogle Judge of the High Court of Madras that the remittances must not only be considered to be applications, but elso that they were made to the proper Court within the meaning of

(1934) A I R 1934 Mad 302 (394) . 57 Mad 808 . 150 Ind Cas 113, Caruchan v. Khunhamu.

(1922) A I R 1922 Mad 247 (248) 45 Mad 202 70 Ind Cas 333, Sankara Namar Pillas v. Puthia Veetsl Thangamma.

(1928) A I R 1928 Lah 7 (9) 111 Ind Cas 259, Ghanayalal v Punjab National Bank Ltd

(1938) A I R 1938 Lah 326 (327) 178 Ind Cas 202, Uttarchand Kapur & Sons v. Sayed Hameed. (17 Cal 53 held no longer good law)

"Lathon-AIR

10. (1931) A I B 1931 Cal 719 (725) 134 Ind Cas 922 59 Cal 760 (F B). Amer Krishna . Jagat Bhandu.

Note 101

1. (1898) 22 Bom 83 (85) 2. (1923) A I R 1923 Oudh 9 (13) 69 Ind Cas 660 26 Oudh Cas 71. Shee Ram

(1933) A I R 1933 Sind 341 (343), 27 Sind L R 14 . 147 Ind Cas 470, Detra: v. Fatehchand

3. (1917) A I R 1917 Mad 257 (257, 258) . 35 Ind Cas 237, Penugonda Rattam v. Korasika Thatha.

(1881) 6 Bom 31 (32), Manahar v. Gebiapa

٠..

(1938) A I R 1938 Lah 451 (452) 177 Ind Cas 483, Firm Abdur Rahim-Mohammad Guliar v. Firm Fate Mohammad Din Mohammad.

(1913) 20 Ind Cas 252 (252) - 37 Bom 559, Murgeppa Madiwallappa v. Basawantrao Khalilappa

Article 182 (Clause 5) Notes 101-102 this Articla. An application to the Court of a Native State to transmit the decree of that Court to a British Indian Court for execution has been held to be an application to the proper Court to take some step-in-aid of execution of euch decree within the meaning of this Articla. According to the High Court of Bombay, an application to a Court of a Native State between whom and the British Government there exists an agreement to execute each other's decree, to return the decree (of a British Indian Court) which had been sent to it back to the British Indian Court, is one made to the proper Court within the meaning of this Articla. See also Notes 87 to 98.

102. Step must be one to be taken by the Court.—The words "application to take a step in aid" refer to the steps to be taken by the Court on the application of the party. The acts of a party himself will not therefore constitute a step-in-aid of execution within the meaning of this Article.1 Thus, the act of a party in getting the necessary encumhrance certificate, or copies of other documents,2 or the filing of certain papers in Court to be kept in the record,3 or the filing of certain papers in Court to be kept in the record,3 or the filing of certain papers in Court to be kept in the act of identify the jodgment-debtor,4 are not steps-in-aid of execution withio the meaning of this Article. Where the decree-holder asked for time to enable him to take out substituted service of the notice ordered to be taken to the judgment-debtor, it was held by the High Court of Madras that the act for which the time was asked for increased the making of the application to take out substituted service, was one to he done by the party and not by the Court and

(1933) A I R 1933 All 156 (756): 145 Ind Cas 915, Narayana Dass v. Mt. Tararati.

[See also (1932) A I R 1932 Pat 286 (286); 11 Pat 513; 139 Ind Cas 843, Seshaiyer Rajamanner Aiyer v. Madan Mohan Palmaik.
 (1937) A I R 1927 Cal 952 (953); 55 Cal 603; 104 Ind Cas 663, Jugal Kshori Deb v. Badwa Nath Roy.

4. (1933) A I R 1933 Mad 63 (84, 85): 56 Mad 820: 140 Ind Cas 493, Raja Rajeswara Sethupaths v. Kuppusam Pillar.

5. (1923) A I R 1923 Mad 72 (73, 76): 69 Ind Cas 932: 45 Mad 1014, Srinivasa Algengar v. Narayana Rao.

 (1929) A I R 1929 Bom 418 (420): 53 Bom 814: 123 Ind Cas 507, Fatechand Famoratay v. Jitmal Runchand.

Note 102

- 1. (1933) A I R 1933 Mad 675 (676) : 145 Ind Cas 933, Ramaswamy Chetty v.
- 'rao. of postage') 2. (1934) A.I. R. 1934 Oudh 426 (427) : 9 Luck 288 : 147 Ind Cas 706, Suranya
 - Begam v Trilol. Nath. (1886) 12 Cal 441 (444), Rajhumar Banerjes v. Rajlakhi Dabs. (Applying
- for copy of decree.) 3. (1928) A I R 1928 Lah 443 (443): 110 Ind Cas 691, Das Ram v. Malsk
- Chhabbar Sungh.
 4. (1915) A I R 1915 Cal 190 (131): 27 Ind Cas 225, Jugol Kishore v. Chintamonev.

that consequently it was not a step-in-aid of execution 5 It was not considered whether the grant of time which was prayed for was itself a step-in-aid of execution or not. In the undermentioned case it was held by a single Judge of the Allahabad High Court that a sten in aid of execution must be an act to be done by the decree. holder in Court, and that a certification of a payment made by the indement debtor to the decree holder out of Court was not a step.in. aid of execution. The reasoning that it is not a step-in-aid of execution by reason of the fact that the payment was made out of Court does

103. There should be an application. - In order to give a fresh starting point under clause 5, it is not only necessary that the step-in-aid of execution asked for must be a step to be taken by the Court, but also that there should be an application to the Court for that purpose.1 It is really the vigilance of the party in making the

- 5, (1933) A I R 1933 Mad 675 (676) : 145 Ind Cas 933, Ramaswams Chetty v. Palaniappa Chetty.
- 6 (1938) A I R 1938 All 43 (49): 143 Ind Cas 324, Ja: Karan v Nanah Shahs.

Note 103

- 1, (1933) A I R 1933 Mad 83 (84, 85): 140 Ind Cas 498 . 56 Mad 320, Raje. swara Sethupaths v. Kuppuswams Pillas.
 - (1925) A I R 1925 Lah 233 (235) ; 78 Ind Cas 241, Ferm Sherumal-China-Mal v. Fim Hira Lal-Anant Ram
 - (1931) A I R 1931 Lah 81 (81, 82) : 131 Ind Cas 100 : 12 Lah 153 (F B). Ghanaya Lal v. Nathu Ram.
 - (1918) 18 Ind Cas 236 (237) (Lab), Wals Ram v. Bhagwan Das.
 - (1924) A I R 1924 Mad 906 (907) 82 Ind Cas 497, Arungchalam Chettrar v. Lakshmanan Chettsar.
 - (1894) 20 Bom 179 (180), Dwarhanath Appays v. Anand Row Ram Chandra. (1910) 7 Ind Cas 759 (760) (All), Bhavans Prasad v. Iftskhar Husain.
 - (1908) 30 All 179 (181) 1908 All W N 74 : 5 All L Jour 258, Sheo Prasad v. Indar Bahadur Singh.
 - (1901) 25 Eom 639 (644) . 3 Bom L B 275 (F B), Maluckchand v. Bechar. (1903) 13 Mad L Jour 33 (38) (N R C)

not seem to be correct.

- (1900) 22 All 358 (360) . 1900 All W N 108, Thalur Ram v. Katwaru Ram. (1901) 1901 All W N 42 (42), Nath Mal v Zahur Muhammad.
- (1897) 22 Bom 722 (726), Trimbak. .. Kashinath
- (1900) 1900 All W N 88 (89), Har Sahas v. Sham Lal.
- (1933) A I R 1933 Mad 674 (674) . 147 Ind Cas 586, Chathu Kutty v Raman. (1933) A I R 1933 Mad 597 (598) 144 Ind Cas 66, Ramanathan Chettiar v. Estate Collector of Snaganga.
 - (1920) A I R 1920 Cal 113 (113) . 54 Ind Cas 643, Americalal Monterjee v. Haralal Mooherses.
- (1889) 16 Cal 747 (748), Umesh Chunder Dutta v. Soonder Narasn Deo
- (1927) A I R 1927 Pat 113 (113) . 99 Ind Cas 869 6 Pat 280, Baldeo v. Lachman.
- (1883) 9 Cal 730 (732) 5 Shome L R 2I 18 Cal L R 91, Toree Mahomed v. Mahomed Mabood Buz. (1912) 13 Ind Cas 189 (189) (Cal), Madan Mohan Dey v. Ganca Chandra
- (1924) A I R 1924 Oudb 231 (232) . 73 Ind Cas 211. Mahomed Alam v. Bachchu.

Article 182 (Clause 8) Notes 102-103 Article 182 (Clause 5) Note 103 application that gives him the benefit of a fresh starting point. In an application made for a purpose for which no such application is necessary under the law, cannot furnish a fresh starting point. In Thus, an application asking the Court to confirm an execution sale under Order 21 Rule 92 of the Code of Civil Procedure will not furnish a fresh starting point of limitation. Similarly, where an application is made for a particular relief and has been ordered, a repetition of the application subsequently, which is unnecessary, all not give a fresh starting point. So also an application for the amendment of an execution application when is already in proper form cannot be said to he a step. in-aid of execution.

There is no form prescribed for an application to take a stepin-aid of execution. The question whether a particular act or

- (1926) A.I.R. 1926 Cal 879 (880): 94 Ind Cas 44, Jadu Nath Supha v. Kuthwa Rangan Dauga, (Issue of notice under O, 21 E. 65, Crill Pro. Code, to the judgment-debtor in order that he might be present to assar the Court in drawing up the sale preclamation, on the motion of the decree-holder, but of its own accord is not a step in-sid of execution. Nor does the swearing in of an affairt by the decree-holder's identifier to the effect that the notice had been serred, uniccompanied by any application, or all or written, give a fresh start to lumitation.)
- [See also (1909) 3 Ind Cas 336 (337) (Cal), Raj Behari v. Kali Har Guyla.] 1a.See also (1806) 5 Suth W R Misc 43 (49), Hemraj Chowdhry v. Assodum. (The act which the law requires one man to do to save his limitation
- is to his decree of one dake and character, cannot be considered the same act which another is required to do to are his limitation respect to that other man's decree of a totally different date and character.)

 1b.(1904) 21 Cal 1011 (1018): 9 Cal W N 193, Umesh Chandra Dan v. Shib
 - 1b.(1904) 31 Cal 1011 (1013): 9 Cal W N 193, Umesh Chandra Dats v. Sho Naravn Mondul. (1918) A I R. 1916 Mad 620 (622): 41 Mad 251: 41 Ind Cas 701, Maximans
 - (1918) A 1 R 1918 Mad 620 (622); 41 Mad 251; 41 Ind Cas 701, Maintain.

 Muddhar v. Schlussoami Ayor.
 (1886) 12 Cal 441 (444), Rajhumar Banerji v. Rajlahh Dabi. (Order of
 - Court which requires no application does not give starting point.)
 (1922) A I R 1922 Mad 30 (31): 70 Ind Cas 80, Krishna Aiyer v. Mayan.
 - kutts. (1937) A I R 1937 Rang 406 (407): 172 Ind Cas 775, Ko Po Shem v. M. J.
 - Keekeebha: & Co.
 [But see (1927) A I R 1927 Oudh 134 (134, 135): 100 Ind Cas 303:
 - 2 Iuck 419, Ramial v. Udst Naram Singh. (1901) 29 Cal 580 (583), Jagannath Khan v. Brojonath Pal.)
 - 2. (1901) 31 Cal 1011 (1013) : 9 Cal W N 193, Umesh Chandra Dass v. Shib
 - Norann Mondul. (1870) 13 Suth W R 315 (315), Mullick Enact Ali v. Wahed Ali. (1881) 10 Cal L R 330 (330), Motendro Chandra Ghose v. Mohendro Nath
 - Ghose. (1868) 9 Suth W R 100 (101), Juggut Mohines Bibes v. Ramchand Ghose.
 - (1867) 8 Suth WR 359 (360), Maharaja of Burdwan v. Luckee Monee Debet.
 - (1867) 8 Suth W R 359 (360), Maharaja of Burduan v. Lucke Blonk Dev v. Banes (1869) 11 Suth W R 117 (117) - 2 Beng L R A C 235, Shib Ram Dev v. Banes Madhub Miller.
 - (1920) A I R 1920 Mad 86 (87): 58 Ind Cas 536, Rangachartar v. Subramants Chefty. (A I R 1918 Mad 620. Referred to.)
 - 4. (1930) A I R 1930 Cal 304 (305) : 124 Ind Cas 830, Hatimullah v. Sukhamoy Chaudhury.
 - 5. (1932) A I R 1932 Pat 309 (311) : 11 Pat 785 : 142 Ind Cas 155, Sital Prasad Shukul v. Babu Lai Shukul.

proceeding amounts to an application depends upon the facts and circumstances of each case. The Articlo must be construed so as to prevent, as far as possible, the defeat of bona fide endeavours of the decree-loider to secure the fruits of the decree. The word "application" has therefore been liberally construed as including any document containing a request. It is not necessary that the application should be in writing unless required by the Code. It may be oral. Where the facts and circumstances raise the pre-

- (1925) A I R 1925 All 291 (293): 88 Ind Cas 271: 47 All 667, Raghunath Prasad Singh v. Lachhmi Naram Singh.
- 7. (1882) 5 Mad 141 (142, 143), Kunha v. Seshagers.
- (1923) A I R 1923 Oudh 9 (13) · 69 Ind Cas 660 · 26 Oudh Cas 71, Sheo Ram v. Ram Bharosey. (In so In as these decisions suggest that an application means a document, they cannot however be neepted as correct.)
- (1930) A I R 1930 Oudh 465 (470, 471). 128 Ind Cas 728, Hasan Shah v Mohammad Amer Merca. (Do.)
- 9. (1922) A I R 1922 Mad 30 (31) . 70 Ind Cas 80, Krishna Aiyar v. Veetsi Mayyankuti.
 - (1934) A I R 1934 Bom 266 (272) 151 Ind Cas 767, Gopal Shankar v. Rassing Premps.
 - (1919) A I R 1919 Oudh 375 (376) . 22 Oudh Cas 75 . 52 Ind Cas 110, Guisars Lat v. Ram Bhajan
 - (1914) A I R 1914 Mad 384 (384): 23 Ind Cas 533 38 Mad 695, Abdul Kadır Rowther v. Krishia Malamal Nair Kornasan.
 - (1929) A I R 1929 Rang 152 (153): 7 Rang 132 . 117 Ind Cas 578, Somasundaram Chettyar v. Ma Shwe That.
 - (1897) 22 Bom 722 (725, 726), Trinibal v. Kashinath.
 - (1918) A I R 1918 Mad 620 (621) 41 Mad 251 41 Ind Gas 701, Masilamans Mudalsar v. Sethuswams Asyar
- 10 (1927) A I R 1927 Oudh 134 (131) . 2 Luck 419 100 Ind Cas 308, Ram Lal v. Udil Narain Singh.
 - (1923) A I B 1923 Nag 11 (11) 67 Ind C. 899, Narayan Rao v Balkrishna.
 - (1925) A I R 1925 Bom 443 (443) 89 Ind Cas 298, Mulchard Manays v. Jamanbi Abdul Kabir.
 - (1914) A I E 1914 Mad 381 (385) S8 Mad 695 23 Ind Gas 533, Abdul Eader Rowther v. Krishna Malamai Nair Karnaban.
 - (1880) 3 All 139 (140) 5 Ind Jur 430, Amar Singh v. Tela. (1882) 1882 All W N 169 (169), Khanan Singh v Daya Ram

s 114, Hanu-

- (1917) A I R 1917 Pat 698 (699) 38 Ind Cas 540, Surajmal v. Sarjoog Prasad Singh (1925) A I R 1925 Oudh 453 (454) 88 Ind Cis 232, Perth. Nath. v. Ram
- (1925) A I R 1922 Oudh 453 (454) 88 Ind Cis 232, Perthi Nath v. Ram Saran. 11. (1925) A I R 1925 bom 443 (443) : 89 Ind Cas 228, Mulchard Manaji v
- Jamanbi Abdul Kabir. 12. (1924) A I R 1924 Mad 186 (196) 76 Ind Cas 769. Lakshmi Narasa
 - Raju v. Ganganna. (1932) A I R. 1932 Oudh 148 (150) 137 Ind Cas 768 · 7 Luck 590 (F B), Ram Bharote v. Ramman Lal.
 - [See also (1918) 18 Ind Cas 236 (236, 237) (Lah), Wals Ram v. Bhag. van Das.

Article 182 (Clause 5) Notes 103-104 order made is of such a nature that, without an application the Court would not have made it, an application would be presumed to have been made. 13

The application for step-in-aid need not he bona fide.15

104. Plaint, if can be treated as an application. - There is a conflict of opinion as to whether a snit filed for a declaration that certain property is liable to be proceeded against in execution of the decree, can be considered to be an application within the meaning of this Article. Under the Code of 1859 such a suit was held to save time as being "some proceeding" to keep the decree in force.18 In Raghunandun Pershad v. Bhugoo Lall, it was held by the Calcutta High Court that the Limitation Act draws a clear distinction between suits and applications and that a plaint in a suit such as that abovementioned could not be said to be an application within the meaning of this Article. In Kuppuswami v. Rajagopala,2 it was held by the High Court of Madras that a suit under Section 53 of the Transfer of Property Act to set aside an alienation by the judgment.debtor as being fraudulent, could not be treated as an application to take a step in aid of execution of the decree which would give a fresh starting point of limitation for a subsequent application for execution against the moveable property of the indgment debtor. According to the Chief Courts of Oudh3 and the Punjab.3a a suit for a declaration

> (1927) A I R 1927 Pat 323 (324): 103 Ind Cas 37, Kara Patt v. Ram Nath Singh]

13. (1913) 19 Ind Cas 394 (395) (Bom), Chinappa Karbasaya v. Ladasahib.

(1928) A I R 1928 Cal 302 (302) : 109 Ind Cas 588, Mohan Lal v. Kasimuddin.

(1919) A I R 1919 Low Bur 117 (118) : 52 Ind Cas 656: 10 Low Bur Rul \$4, Admuthu Pellas v. Adiappa.

(1918) A I R 1918 Nag 91 (95, 96), Laxm: Narayan v. Bhioraj.

14. (1888) 4 Mad H C R 75 (76), Konda Raju Venhata Subbanya v. Ramahrishnamma.

(1934) A I B 1934 P C 14 (16): 55 AH 993 (1000, 1001) 61 Ind App 62: 147 Ind Cas 323 (P C), Khakit-ur Rahman v. Collector of Etah. [See also (1929) A I R 1929 All 625 (690): 118 Ind Cas 17: 52 All

11, (F B), Kayastha Co. Ltd v. Sita Ram Dubey.]

Note 104

1a(1867) @ Suth W R 99 (99), Akbur Gazes v. Bibee Nufeczun.

1. (1889) 17 Cal 268 (271, 272).

2. (1922) A I R 1922 Mad 79 (e1): 45 Mad 466: 70 Ind Cas 324.

3. (1923) A I R 1923 Oudh 9 (14) · 69 Ind Cas 660 : 26 Oudh Cas 71, Shee Ram v. Ram Bharosey.

(1930) A I R 1930 Ondh 468 (470): 128 Ind Cas 728, Hasan Shah v. Mohammad Amer Mirea.

(1936) A I R 1936 Oudh 240 (249, 250) : 160 Ind Cas 465 : 11 Luck 716. Rudra Naram v. Maharaja of Kapurthala.

(1935) A I R 1935 Oudh 490 (492): 155 Ind Cas 605: 11 Luck 266, Ehuth Ram v. Ram Somer. (Suit in Court different from executing Court-No fresh startung point.)

3a(1875) 1875 Pum Re No. 5, Delhi and London Bank v. Captain A. H. Plouden.

Article 182 (Clanse 5) Notes 104-106

that certain properties are liable to be proceeded in execution of the decree, can be treated as an application to take a step-in-aid of execution provided it is filed in the Court whose duty it is to execute the decree. The decisions proceed on the view that clause 5 does not use the word "application" in any restricted sense or in antethesis to a "plaint" or any other document such as a memorandum of appeal, but merely in the sense of a document containing a request. The High Courts of Nagpur and Allahahad have held that such a suit cannot he treated as an application.4 It is submitted that the view of the Chief Courts of Oudh and Provah stated above is not correct. Section 2 sub-section 10 ante provides that a "suit" does not include an appeal or an application. The First Schedule of the Act deals separately with "suits," "appeals" and "applications." To construe the word "application" in clause 5 as including a "suit" would seem to he an ohvious disregard of the intention of the Legislature.

105, Appeal, whether can be treated as an application .-There is also a difference of opinion on the question whether an appeal by the decree-holder against an order affecting the execution of his decree can he considered to be an application to take a sten. in aid of execution. It has been held in the undermentioned cases1 that on appeal by the decree-holder to the Appellate Court cannot be held to he an application to the proper Court to take a step-in-aid of the execution of the decree. (See also Note 93, ante.) A contrary view, namely that an appeal by the decree-holder would be an application to take a step-in-aid of execution of the decree, has been taken in the undermentioned cases.2 It is submitted that this view cannot be supported on principle. The decisions have not considered the aspect that chylously the Appellate Court is a Court different from the Court whose duty it is to execute the decree and is therefore not a proper Court. The question whether an appeal is an application really does not arise at all nuder this clause.

106. Application for review of order in execution, - An application for review of an order "striking off" an execution case and for its restoration to the file, has been held to be an application to take a sten-in-sid of execution within the meaning of this clause 1

Note 105

- 1. (1904) 26 Att 608 (610) 1904 All W N 139 1 All L Jour 336, Nand Exshere v. Sipahi Singh
 - (1923) A I R 1923 Bom 431 (431) 73 Ind Cas 1030 47 Bom 783, Govinddas Rajaram v Ganpat Das Narottam
 - (1924) A I R 1924 Cal 419 (419) . 74 Ind Cas 379. Rasans Bandhu v Kals Prasanna.
- 2 (1901) 4 Oudh Cas 333 (339), Ujagar Lal v. Shankardayal,
 - (1921) A I R 1921 All 174 (175) 64 Ind Cas 598, Baldeo Singh v. Ramsarup (1914) A I R 1914 Bom 247 (247) 39 Bom 20 26 Ind Cas 262, Lazmiram Lallubhas v. Bhalshankar Vensram.

Note 106

1. (1900) 27 Cal 285 (288), Kartick Nath Pandey v. Juggernath Ram Marwari.

^{4. (1938)} A I R 1938 Nag 534 (586, 537), Rajaram v Pasku.

^{(1887) 1887} All W N 198 (198), Madho Ras v Raykals Kuar.

Article 182 (Clause 5) Notes 106s-109

106a. Re-submission of a returned application. - Where an application for execution is returned for amendment and is subsequently re-submitted after compliance with the order of the Court. the act of re-submission cannot be considered to be an application for a step-in-aid within the meaning of this Article.1

107. The step asked for, whether should he in aid of a British Indian Court .- It has been held by a Full Bench of the High Court of Madras that the step asked to be taken by the Court must be a step-in-aid of the execution by a British Indian Court, and that consequently an application to a British Indian Court asking it to send the papers to the Court of Native State for execution there is not a step-in-aid of execution within the meaning of clanse 5 so as to give a fresh starting point for a subsequent application in the British Indian Court. A Bench of the Punjah Chief Court has also held that the words "step in aid of execution" refer to steps in aid of the execution of the decree which may be taken under the Code of Civil Procedure or any other provision of law in force in British India regulating the excention of decrees, and that an application to a British Indian Court to transfer the decree to a foreign Court for execution there according to the laws of the foreign State, is not an application for n step in aid of execution within the meaning of this Article.2 The High Court of Bombay has, on the other hand, taken a contrary view, namely, that such an application would be a step-in-aid of execution within the meaning of this Article According to that High Court, the word "execution" is n word of general meaning and is not confined to execution authorized only hy the Civil Procedure Code; it would include execution which under agreement between the foreign States and the British Government, a foreign Court is entitled to levy.3

108. The step must be with reference to the decree sought to be executed. - The step which is requested to be taken must be in furtherance of the decree sought to be executed and not to other matters. Thus, where costs are incurred in the course of execution proceedings and applications are made for the recovery of such costs. they cannot be considered to be applications to take steps in aid of the execution of the decree itself.1

109. Application for execution, not in accordance with law. may still he regarded as application for step-in-aid. - An application merely to execute the decree cannot be considered to be

Note 106a

^{1. (1909) 4} Ind Cas 1131 (1134) (Mad), Raja Rathna Kavundan v. Doracami. Note 107

^{1. (1918)} A I R 1918 Mad 580 (584): 40 Mad 1009: 42 Ind Cas 294 (F D). Pierce Leslie & Co. Ltd. v. Perumal

^{2. [1891] 1881} Pun Re No. 107, Saadat Ali Khan v. Muhammad Ali Khar. 3. (1918) A I R 1918 Bom 236 (237): 42 Dom 420: 46 Ind Cas 56, Janardan Cound v. Naravan Krishnan.

Article 182 (Clause 5) Notes 109-11

an application to take a step-in-aid of execution. But, where an application for execution contains prayers for the execution of the decree and also for certain matters which would be steps-in-aid of the execution, the application, though it may fail to be in accordance with law as an application for execution, may still be regarded as an application in accordance with law to take a step-in-aid of execution of the decree. In Sadaya Chandra v. Pares Nath, a application which was defective in material particulars as an application for execution contained prayers that the applicant, a legal representative of the decree-holder, might be permitted to proceed with the execution. It was held by the High Court of Calcutta that the application, though not in accordance with law as an application for execution, was yet an application in accordance with law to take a sten-in-aid of execution.

- 110. Application for step-in-aid dnes not lie where execution is harred. An application for a stop-in-aid of execution can only be taken where either an execution application is pending or the decree is capable of being kept alive. When this execution of the decree bursed by limitation and the decree thus ceases to be capable of heing kept alive, there cannot be any step-in-aid of execution subsequently which would enable the decree to be executed.¹
- 411. Application for order absolute or for final order.—Before the Civil Procedure Code of 1908, proceedings to obtain an order absolute for sale or foreclosure were regarded as proceedings in execution. An application for an order absolute for sale under Section 87 of the Transfer of Property Act or for foreclosure under Section 89 of the said Act was held to be one to take a step-in-aid of execution."
 - (1926) A I R 1926 All 440 (444) 48 All 377 94 Ind Cas 961, Nandlal Saran Dharam Kuti Saran

Nute 109

- (1928) A I R 1928 Mad 440 (442). 112 Ind Cas 36, Abdul Karım Sahib v. Lahşimanaswamı.
- (1922) A I R 1922 Cal 44 (45) 64 Ind Cas 571, Sadaya Chandra Jana v. Pares Nath Ghose.
 - (1927) A I R 1927 Rom 52 (52, 53) 98 Ind Cas 911, Burdichand v. Bade-saheb.
 - (1990) A I R 1990 Born 65 (66) 122 Ind Cas 656, Gopairao v Hars (Application for execution without inventory of property may be regarded as step-in-aid of execution.)
 - (1905) 28 Mad 557 (559), Pachtappa isars v. Poojab Seeran.
- (1932) A 1 R 1932 Pat 286 (288) 11 Pat 513 : 139 Ind Cis 813, Sheshaiyer v. Madanmohan
- 3. (1922) A I R 1922 Cal 44 (45) 64 Ind Cas 571

Nate 110

1. (1931) A I R. 1931 Cal 719 (725) 59 Cal 760 134 Ind C 1. 912 (F B), Amar Krishna Chaudhury v. Jagat Bandhu Bisaas Nute 414

1 (1892) 1892 All W N 5 (5), Ram Kripal v. Sheo Sahai

(1920) A I R 1920 Mrd 296 (298) 56 Ind Cas 563, Gampathia Pillai v. Gopala Iyer

Article 182 (Clanse 5) Notes 111-113

Under the Code of Civil Procedure, 1908, an application for a final decree for sale or for foreolosure is an application in the suit and not for the execution or to take n step-in-aid of the execution of any decree.2 So also an application for a final decree in a partition suit is not one to take a sten-in-aid of execution.3

Suppose now that in a case where a final decree has already heen passed the decree-holder, under a mistaken view, applies for final decree. Can such an application be treated as one to take a step-in-aid of the execution of the decree ? It has been held by the High Court of Labore that it cannot be so treated, the reason being that the decree-holder contemplated by such application merely a step to further his suit and not the execution of any decree.4 The High Court of Madras has, on the other hand, held that the decreeholder must be regarded, by such application, to have endeavoured to get nn order which he thought was necessary helore executing the decree, that the ultimate object of the application was to hasten the actual realisation of the decree amount, and that, as such, the npplication was a step-in-aid of execution. According to the High Court of Bombay, there is no rigid rule to he laid down in such cases and that euch applications may, in some cases, he regarded as heing steps in aid of execution, although in other cases they may not he so regarded.6

- 112. Application to appoint a receiver. An application by the decree-holder for the appointment of a receiver is an application to take a etep-in-aid of execution.1 An application by the decreeholder praying that the receiver who has been appointed in execution proceedings should pay money to him, is also one to take n step.in.aid of execution.2
- 113. Application for euccession certificate. An application to obtain a succession certificate is not one to execute a decree. It is also not an application to take a step-in-aid of execution.1 The
- 2. (1928) A I R 1928 Mad 33 (39): 106 Ind Cas 395, Kunhammad Haji v. Koshuvammal, 3. (1921) A I R 1921 Bom 260 (261) : 45 Bom 952 : 61 Ind Cas 159, Dayabhai
- Chunstal v. Bas U jam. 4. (1938) A I R 1938 Lah 117 (118, 119) : I L R (1937) Lah 671 : 175 Ind Cas
- 846, Jodh Singh v. Firm Bhagwan Das.
- 5. (1928) A I R 1928 Mad 38 (39) : 106 Ind Cas 395, Kunhamed Haji v. Kozhurammal. 6. (1924) A I R 1924 Bom 71 (72) . 79 Ind Cas 407, Bindhu Gorind v. Hanmat
 - [See also (1922) A I R 1922 Bom 95 (95): 45 Bom 761: 67 Ind Cas

153, Herachand Khemchand v. Aba Lala Patul.] Note 112

- 1. (1929) A I R 1929 Lab 57 (58): 113 Ind Cas 909, Ghannaya Lal & Co. v. Jassa Ram Hiranand.
- (1900) 5 Ind Cas 758 (759) (Mad), Sambasua Mudals v. Krishnan. 2. (1916) A I R 1916 Pat 56 (56): 42 Ind Cas 802, Raghunandan Singh v. Jugal Kishore Trigunast.

Note 113 1. (1913) 20 Ind Cas 252 (252): 37 Bom 559, Murgeppa Madiwallappa v. Basawantrao Khalilappa.

reason is that it is perfectly independent of, and has nothing to do with the execution of a decree, although the ultimate object of it may he to use the certificate in furtherance of execution. It is impossible to say that the application to get the certificate is an application to the proper Court to take some step-in-aid of execution within the meaning of clause 5, Article 182. The words "proper Court" in the Article also tend to support this conclusion. An application to obtain a succession certificate may be made in one of several Courts. Obviously, it could not be such an application as

114. Application for confirmation of sale,—It has been seen in Note 103 ante, that an application for a purpose for which no application is necessary under the law cannot furnish a starting point of limitation. A Court is bound to confirm a sale under Order 21 Rule 92 of the Code of Civil Procedure, where no application has been made under Rules 89, 90, 91 of the same Order. An application made in such a case praying that the Court might confirm the sale will not be an application to take a step-in-aid of execution of the decree within the meaning of classe 5. Nor will the order of the Court confirming the sale without any applications are time?

clause 5 Article 182 contemplates.2

- 115. Application for postponement of execution proceedings, There is a difference of opinion on the question whether an application for the postponement of execution proceedings is an application for a step-in-aid of execution. The general trend of opinion in the High Court of Madras is that such an application is not one to take a step-in-aid of execution. Thus, an application for time to enable the decree-holder to file the necessary encumbrance
 - [See also (1868) 4 Mad H C R 148 (149), Varabhadra Rau v.
 - Ramaiya (1868) 4 Mad H C R 89 (90), Lakshmamma v. Venkataraj Gava-
 - (1913) 20 Ind Cas 252 (253) 37 Bom 559, Murgeppa Madiwallappa v. Basawantrao Khalilappa.
 - Note 114
 1. (1904) 31 Cal 1011 (1013) * 9 Cal W N 193, Umesh Chandra v. Shib Narain.
 (1906) 6 Ind Cas 261 (264) (Cal), Panchanan Chowdhry v. Nrisingha
 Prasad Rov.
 - (1923) A I R 1923 Pat 22 (22, 23). 2 Pat 249: 72 Ind Cas 938, Triloke Nath Jha v. Bansman Jha. 2.
 - (1869) 11 Suth W R 117 (117) 2 Beng L R A C 235, Shib Ram Dey v. Banes Madhub Mitter.
 - (1870) 18 Suth W R SS (39) 4 Beng L R A C 115, Maharajadhiraj Mah-tab Chund Bahadur v. Ram Brahma Mullek. [See also (1868) 10 Suth W R 224 (224) 12 Bem L R 505 (Note), Gunga Bishen Chund v. Maharajadhira; Mahlab Chand
 - Bahadur.]
 [But see (1872) IS Suth W R 156 (157), Gobind Chunder Chowdhury
 v. Juhoorul Nissa Bibee.]

Article 182 (Clause 8) . Notes 118-115 Article 152 (Clause 6) Note 115

certificate,1 or to apply for substituted service,2 is not a step.in-aid of execution. In Balasubramania Pillai v. T. A. B. Chit Company,3 where an application which was defective had been returned for correction and the decree-holder applied for extension of time to carry out the correction, it was held that the application was not one to take a step-ia-aid of execution, inasmuch as there was an previous application for execution nending when the application for time was made. As to the correctness of this reasoning, see Note 100 ante. In Sankaran Nair v. Puthiya Veetil Thangamma, where a mortgagor applied for extension of time to pay money due under a decree for redemption which also provided for sale on default, it was held that the application was one to take a step-in-aid of execution of that portion of the decree which related to redemption.

According to the High Court of Bombay, an application for time to do something which would assist the decree holder in furthering the execution of the decree would be one to take a step in aid of execution, but an application which is intended as a step, which, if successful, would avoid the necessity of execution is not one to take a step-ia-aid of execution.5 Thus, as application made by both the parties to the Court to postpone the application for execution with a view to n compromise being arrived at, would not be one to take a step-in-aid of execution.6 But an application for time to produce an extract from the Collector's Record to be filed in the pending execution proceedings, or to ascertain the share of the judgment. debtor in the property to be put up for sale, 70 or an application for time to produce copies of the decree and judgment to be filed in the execution proceedings, would be an application to take a step-in-aid of execution.

Note 115 1. (1928) A I R 1929 Mad 143 (144) : 106 Ind Cas 618, Ramaswami V.

Veeranna. (1926) A I R 1926 Mad 1197 (1198) : 28 Ind Cas 163, Katifi Mukammad

Hamiduddin v. Muhammad Ghose. .. i. . Mattigr. (1931)200

(1311) A L 18 1311 Mau nos 18301, 35 and 63 1 A 18 1914 Mad 381, Followed-Pandaia Muthai Naudu. (A I R 1914 Mad 381, Followed-This case has been dissented from m A I R 1929 Mad 143))

2. (1983) A I B 1983 Mad 675 (676, 677): 145 Ind Cas 933, Ramaswamy Chelly v. Palausappa Chetty.

3. (1919) A I R 1919 Mad 220 (222) : 52 Ind Cas 765.

4. (1922] A I R 1922 Mad 247 (247) : 70 Ind Cas 333 ; 45 Mad 202.

5. (1923) A I R 1923 Bom 461 (462) . 73 Ind Cas 1011, Vishnu Nagarra v. Narasınha Pandurang.

6. (1923) A I R 1923 Bom 461 (462): 78 Ind Cas 1011, Vishnu Nagarra v. Narasınha Pandurang.

7. (1912) 17 Ind Cas 969 (969) 37 From 317, Sheshdasacharya v. Bhimacharva.

7a (1921) A I R 1921 Bom 33 (33) 60 Ind Cas 916, Vishianath v. Narsu. 8. (1912) 17 Ind Cas 30 (30) : 36 Bom C3a, Hardas v. Vethaldas.

Article 182 (Clause 6) Notes 115-116

It has been held by the High Court of Calcutta that an application for time to produce evidence to prove service of notice." or a joint application by the parties reporting part satisfaction of the decree and asking for time to pay the balance of the decree amount.10 or a joint compromise reporting satisfaction of part of the decree and praying for time to have the rest of the decree executed at a future time. It is an application to take a step-in-aid of execution. The High Court of Allahabad has also taken a similar view. Thus, it has been held that an application for time for ascertaining the correct address of the judgment-debtor,12 or for postponement of sale in execution,13 is one for a sten-in-aid of execution. See also the undermentioned cases.14

116. Application for issue of notice under Order 21 Rule 22. Civil Procedure Code .- Clause 6 of the Article, as it stood before the amendment of the Act in 1927, provided that a fresh starting point would accrue from the date of issuing a netice under Order 21 Rule 22 of the Code of Civil Procedure Under the Article as it stands at present, the mere issue of a notice by the Court under Order 21 Rule 22 of the Code of Civil Procedure, is not stated as a starting point of lumitation. An application for the mero issue of a notice to the judgment debtor is not contemplated by the Code and, consequently, will not be an application in accordance with law to

9, (1909) 5 Ind Cas 147 (148) (Cal), Narsingh Dayalsingh v. Kali Charan Singh.

10, (1893) 20 Cal 696 (693, 693), Wast Imam v. Poontt Singh,

11. (1910) 6 Ind Cas 366 (367) (Cat), Bundeswars Koer v . tuadh Dehart

12. (1916) 4 I R 1916 All 33 (34) 38 All 690 35 Ind Cas 693. Bhairon Prasad v. Amına Becam

(1919) A I R 1919 All 447 (447, 448) . 50 Ind Cas 278, Sheo Shankar Lal v. Radhe Shiam

(1907) 29 All 801 (302) 4 All L Jone 181 1907 All W N 74. Petam Single v. Tota Singh.

13. (1881) 4 All 60 (62) . 1881 All W N 113, Sitla Din v. Sheo Prasad.

14. (1929) A I R 1929 Lah 335 (336) 119 Ind Cas 228, Ram Chand v. Daval Singh Chanda Singh (An application for extension of time in com-plying with the orders of the Court thereafter is a step-in-aid.)

(1900) 27 Cal 285 (288), Karticknath Pandey v. Juggernath Ram Marwars. (An application for time to pry a decree amount is not a step in aid of execution.)

(1908) 35 Cal 1060 (1063) 8 Cal L Jour 193, Umed Als v .lbdul Karsm. (An application for time is not a step-in-aid of execution and does not prevent subsequent applications from being barred)

(1923) A I R 1923 Cal 572 (574) 76 Ind Cas 455, Rasendra Lal Sha v. Abdul Karım Abu Ahmed Ghusnası Choudhay. (Although an appli-

so or not is not a step-in aid of execution)

(1930) A I R 1930 Mad 995 (996) 54 Mad 306 129 Ind Gas 713, Denasika-mont Annamalat Desikar v. Raju Pillat. (Where decree is passed in favour of plaintiff for recovery of property subject to payment by him of certain amount for improvement to defendant, application by plaintiff for extension of time to enable him to raise money is not step-in aid.)

Artiola 182 (Clause 5) Notes 116-1168 take a step-in-aid of execution.1 Where, however, there is an application for execution containing also a prayer for the issue of a notice under Order 21 Rule 22 of the Code of Civil Procedure, the application, in so far as the prayer for notice is concerned, will be an application to take a aten-in-aid of execution within the meaning of clause 5 of this Article.2

There is a difference of opinion on the question whether the filing of an affidavit of proof of service of the notice issued under Order 21 Rule 22 of the Code can give a fresh starting point under clause 5. According to the undermentioned cases of the Calcutta High Court, the filing of such an affidavit must be regarded as an application to take a step-in-aid of execution. The High Court of Patna has, in one case, followed the above view of the Calcutta High Court, but in a later case has held that the question whether the filing of such affidavit would save time must depend upon the question whether an application should be presumed to have been made in the particular circumstances of the case, and that where such presumption cannot, under the circumstances, he made, the filing of the affidavit will not save time. The same view has been taken in the undermentioned case of the Calcutta High Court. According to the High Court of Bombay," an affidavit cannot, under any circumstances, be regarded as an application and cannot save time under clauso 5.

116a, Application for proclamation of sale under Order 21 Rule 66, Civil Procedure Code. - An application for the issue of a proclamation of sale in respect of property already attached in

Note 116

- 1. (1939) A I R 1939 Mad 195 (195): 180 Ind Cas 674, Nagarainam Pillai v. Ramaswams Iyer.
 - (1994) 9 O P L R 151 (16), Rai Bahadur Mukund Balkrishna Buly v. Lahna Mahar,
 - (1922) A I R 1222 Cal 3 (4): 63 Ind Cas 116, Hazari Lal v. Baidyanath
 - [See however (1878) 1 All 675 (680), Behari Lal v. Salık Ram. (Application for mere notice without application for execution in accordance with law is a proceeding to keep the decree in
 - force under the Act of 1871)] (But see (1905) 1905 Pun Re No. 22: 1905 Pun L R No. 57: 1905
- Pun W R No. 33, Muhammad Nawas Khan v. Ram Das 1 2. (1938) A I R 1938 Mad 553 (555): 178 Ind Cas 525, Subramanyan Tirumu rupu v. Naraina Tirumurupu.
 - (1905) 28 Mad 557 (559, 560), Pachaippa Achari v. Poojali Seenan.
- 3. (1918) A I R 1918 Cal 227 (228) : 38 Ind Cas 536, Pran Krishna Das v. Partab Chandra Dalos.
- (1928) A I R 1928 Cal 302 (S02); 100 Ind Cas 588, Mohan Lal v. Kasımuddin Sheikh. 4. (1919) A I R 1919 Pat 424 (425) : 49 Ind Cas 892 : 4 Pat L Jour 521, Thakur
- Singh v. Shea Bhangan Singh. 5. (1928) A I R 1928 Pat 145 (146) : 6 Pat 691 : 108 Ind Cas 480, Fatch Baha-
- dur Singh v. Parmeshwar Prasad Sahu. 6. (1920) A I R 1920 Cal 22 (24) : 54 Ind Cas 1, Krishna Prasad Mattra v.
- Dhirendra Nath Chakravarty. 7. (1909) 3 Ind Cas 771 (772) (Bom), Mohan Laldas v. Bapuji Ghelabhai.

Article 182 (Clause 5)

execution of a decree is one to take a step-io-aid of execution.1 So also is an application for the issue of a notice to the judgment-debtor under Order 21 Rule 66. Civil Procedure Code, or to have a date Notes 116a-117 fixed for the settlement of the terms of the proclamation.23 But the mere swearing of an affidavit proving the service of such notice unaccompanied by any application is not to take a step-in-aid of execution 3

117. Resistance by decree bolder to objections raised by indement-dehtor to execution proceedings. - As has been seen in Note 103 ante, there can be no fresh starting point available under clause 5 unless an application has been made to the Court for execution or step-in-aid of execution. It follows that a mere opposition to an application by the judgment-debtor which has the effect of obstructing the execution proceedings cannot give a fresh starting point of limitation.1 But, where an application is made or may he presumed to have been made by the decree-holder asking the Court to do something which, if done by the Court, would have the effect of removing the obstacle to the execution placed by the judgment. dehtor, the decree holder will get a fresh starting point of limitation. Thus, where a judgment dehter applies to the Court for recording

Note 116s

- 1, (1884) 10 Cal 851 (856) (F B), Ambica Pershad Singh v. Surdhari Lal. (1919) A I R 1919 Oudh 375 (376) ; 22 Oudh Cas 75 : 52 Ind Cas 116.
 - Gulshars Lal v. Ram Bhajan. (1911) 9 Ind Cas 634 (634) (All), Ray Kishore Upadhya v. Gurcharan Lal.
- 2. (1923) A I R 1923 Pat 180 (181) : 68 Ind Cas 337, Goud Chundra Ray v. Janardan Prasad Thakur.
- 21 (1917) A I R 1917 Pat 698 (699) * 33 Ind Cas 540. Suraj Mal v. Sarjoog Praised Sinch.
- 8. (1926) A IR 1926 Cal 879 (880) : 94 Ind Cas 44, Jadunath Singha v. Krishna Rangini Datiya.

Note 117

1. (1929) A I R 1929 Lah 529 (529): 115 Ind Cas 24, Madho Parshad v. Ghanaya Lal.

'alı Krishna Nandi. application under Court) 13 not step.

- (1926) A I R 1926 Mad 1178 (1182) : 98 Ind Cas 156 : 50 Mad 49, Krishna Pattar v. Seetharama Pattar. (Statement by decree-holder objecting to judgment-debtor's application to record satisfaction is not a step-in-aid.)
- (1926) 50 Mad L Jour 55 (55) (N R C).
- (1922) A 1 R 1922 Mad 79 (81) : 45 Mad 466 : 70 Ind Cas 324. Kuppuswami Chettiar v. Rajagopala Iyer.
- (1905) 28 All 387 (390) : 1906 All W N 54 : S All L Jour 143, Langtu Pands v. Barjath Saran Pande.
 - [See also (1885) 7 AR 898 (899): 1885 AR W N 287, Shib Lal v. Radha Kishen. (A decree-holder should make a direct and

Article 182 (Clause 5) Note 117

satisfaction of the decree and the decree holder contests such application and attends Court with his witnesses or files a list of his witnesses, an application by him requesting the Court to examine those witnesses would be presumed to have been made and the implied application would be considered to be one to take a step-inaid of execution.2 An application by the decree-holder to send for certain records,3 or to summon witnesses,4 or to receive batta for summoning witnesses. for the purpose of resisting the judgmentdehtor's application objecting to the execution of the decree, would be one to take a sten-in-aid of execution within the meaning of this clause. It has been held in the undermentioned cases that an application by the decree-holder asking the Court to reject the objections of the indement-debtor to the execution is a step-in-aid of execution.

Where the indigment-dehtor prefers an appeal against an order passed against him in an execution proceeding, the fact that the decree-holder resists the appeal will not give him a fresh starting point under this clause.7

- 2. (1930) A I R 1930 Cal 304 (305) : 124 Ind Cas 830, Hatimullah v. Sukhamoy Chaudhuru.
- (1918) A I R 1918 Cal 976 (977) : 44 Ind Cas 604. Brojendra Kishore Roy v.
- Din Muhmud Sarkar. (1928) A I R 1928 Pat 612 (614): 7 Pat 708: 118 Ind Cas 582, Jagdeo Narain Singh v. Bhubaneswari Kuer.
- (1925) A I R 1925 All 394 (395) . 47 All 667 : 88 Ind Cas 271, Raghunath Prasad v. Lachms Naram
- 4. (1927) A I R 1927 Lah 653 (654) . 103 Ind Cas 712, Umar Din v. Ghulam
- Muhammad. (1923) A I R 1923 All 415 (416) : 79 Ind Cas 411, Abdul Quddus v. Sayad
- Ahmad Husam. (1922) A I R 1922 All 432 (432) : 64 Ind Cas 524, Mahomed Siddig Khan ..
- Misri Lal. (1910) 5 Ind Cas 292 (294) (All), Shugan Chand v. Ramjas.
- (1883) 5 All 344 [345]: 1833 All W N 57: 8 Ind Jur 53, Alli Muhammad Khan v Gur Prasad.
- (1918) A I R 1918 Cal 635 (636): 40 Ind Cas 1005, Kedar Nath v. Labhi Kanta.
- (1995) A I B 1995 Pat 459 (459, 460) : 4 Pat 202 : 88 Ind Cas 807, Shee
- Sahay v. Jamuna Prasad Singh. 5. (1934) A I R 1934 Mad 710 (710) : 58 Mad 301 : 154 Ind Cas 593, Veerappa Setty v. Munesams Achary. (Reversing A I R 1933 Mad 403 (405).)
- 6. (1918) A I R 1918 All 92 (92) : 40 All 668 : 49 Ind Cas 38, Tamis-un-nissa Bibi v. Najju.
- (1883) 5 All 576 (577) . 1883 All W N 112, Kewal Ram v. Khadim Husain. (1921) A I R 1921 AR 119 (120) : 63 Ind Cas 907, Ishra Rai v. Raghurat Naram Ras.
- (1910) 5 Ind Cas 292 (294) (All), Shugan Chand v. Ramjas.
- (1894) 21 Cal 23 (26), Gobind Pershad v. Runglal.

...

(1924) A I R 1924 Pat 612 (613); T Pat 705; 113 Ind Cas 581, Jagdeo Naram Singh v. Bhubaneswars Kuer. (Application for step-in-sid need not necessarily be made in the course of execution proceedings 116. Payment of process fee, if step-in-aid. — Under the Act of 1859, an application for execution and an order to deposit talbana followed by the deposit of talbana and service of notice were held sufficient to keen the decree slave 1

Article 182 (Clause 5) Note 118

The mere payment of process fee on an application for execution unaccompanied by any application asking the Court to take some specific action is not a step-in-and of execution ² But, where a batta memorandum is not a mere memorandum if the deposit of the batta, but asks for a certain process to be issued, or there are sufficient indications in the process application that the applicant in effect asked for some process to be issued, it is an application to take a step-in-aid of execution.³ It has been held by the Judicial Commissioner's Court of Nagnur that an application for issue of process to a witness

Note 118

- (1866) 6 Snth W R Misc 74 (74), Treelochun Chatterjee v. Radha Monee Dossee.
- (1908) 30 All 179 (180) 1903 All W N 74 5 All L Jour 253, Sheo Prasad v. Indar Bahadur Singh.
 - (1901) 25 Bom 639 (613) 3 Bom L R 275 (F B), Malulchand v. Bechar Natha (From a more payment to the Nazir no application can be inferred.)
 - (1926) A I R 1926 Oudh 289 (290) 1 Luck 153 · 93 Ind Cas 631, People's Industrial Bank, Ltd. Allahabad v. Mahesh Charan Sinha.
 - (1912) 13 Ind Cas 189 (190) (Cal), Madan Mohun Dey v. Ganga Chandra Roy.
 - (1918) A TR 1918 Outh S4 (85) · 90 Outh Cas 332 : 43 Ind Cas 342, Manna Lal v. Sardar Singh.
 - (1921) A I R 1924 Mad 906 (907): 82 Ind Cas 497, Arunachalam Chettiar v. Lal shmanan Chettiar.
 - (1897) 22 Bom 722 (726), Trimbaliv. Kashmath. (More payment of batta under circumstances from which no application can be inferred is not step-in aid.) (1900) 10 Mad L Jour 329 (Jour).
- 3 (1905) 28 Mad 399 (399, 400), Vajayaragharatu Naidu v. Srinnasulu Naidu.
 - (1910) 7 Ind Cas 859 (860) (Mad), Subramana Pellar v. Sankara Subbu Nasdu

(1922) A.I.R. 1922 Mad. 20 (20). To Ind Cas 60, Krishna Asyan v. Mayan Kutti. (An application to the Court to receive railway charges for taking the judgment-debtor to the crest prison and substriction money for his maintenance while in prison is a step in-aid of execution.)

Article 182 (Clause 5) Notes 118-119 in an execution proceeding is only an application for a step of an incidental nature and would not constitute an application for a stepin aid of execution.3a

To render the batta memo an application which would give a fresh starting point of limitation, it is however essential that the application in which it is filed should itself be one in accordance with law.4

118a. Payment of allowance for the subsistence of the judgment-debtor. - An application to the Court to receive the subsistence allowance and the railway fare for sending the judgment. dehtor to the civil pail is one to take a step-in-aid of execution. In Ramudu v. Varadaraja,2 it was held that the mere payment of 7 f Il I - I - renneg subsistence allc

cannot operate

Kuppusmamu3

of the subsistence allowance by money-order to the fail authorities was an application to the proper Court to take some step in aid of execution.

119. Application by decree-holder for copies. - A copy of decree can be applied for a variety of purposes and not necessarily for execution. Therefore, an application by the decree holder for a copy of decree cannot be necessarily one to take a step-in-aid of execution.1 An application by the decree-holder for the return of the

· staraja Mudaliar v.

the sale warrant is a

an Dutt v. Rajendra Nate Dutt. triera payment or process her and the filing of notice of sale imported a request to the Court to proceed in the matter and was equivalent to an application to take some step-in-aid.) (See (1883) 7 Mad 307 (309), Vellaya v. Jaganatha. (It, when postage - at a second to a Court I his decree transferred for o tako some step-in-aid of . to give a new period of limitation. H 3a (1926) A I R 1926 Nag 250 (251) : 91 Ind Cas 1010, Shriniwas v. Jagannath. - Dans V. 4. (1934) A I R 1934 M: Bheema Rao. holder and per dance with law within the meaning of Article 102, a filed in such an application can hardly furnish a starting point of limitation)

Note 118a 1. (1922) A I R 1922 Mad 30 (30, 31) : 70 Ind Cas 60, Krishna dayar v. Vetid Mayankutts.

2, (1921) A I R 1921 Mad 532 (532) : 62 Ind Cas 480.

tennit sond Dem D T 211 Diamen Pamale

. ..

3. (1933) A I R 1933 Mad 83 (84, 85); 140 Ind Cas 498; 56 Mad 320.

Note 119 1. (1933) A I R 1933 All 756 (756) : 145 Ind Cas 915, Narayan Das v. Mi. Taratats. (1920) A I R 1920 Mad 224 (224) : 60 Ind Cas 117. Puthia Veelil Mohidin v. Raman Nayar.

Article 182 (Clause 5) Notes 119-121

copy of the decree filed in previous execution proceedings (even for the purpose of filing subsequent execution application) does not imply my step.in-aid of execution of the decree.² An application by the decree-bolder for a copy of the list of properties attached in previous execution proceedings is not one to take a step.in-aid of execution.³

- 120. Application for execution of attached decree. A obtains a decree X magainst B, and in execution thereof attaches a decree X which B has obtained against C. Under the provisions of Order 21 Rule 53 of the Code of Giril Procedure, A would be entitled to execute decree X. B also would, notwithstanding the attachment, be entitled to execute the same decree. A supplication to oxecute the decree X would be one to take a atep-in-aid of execution of decree X. If B applies to execute he have a supplication will keep alive his decree number the first portion of clause 5. A's application to attach decree Y will however not be a step-in-aid of the execution of the attached decree Y.
- 121. Application for transfer or re-transfer of decree, if a step-in-aid.—An application to have a decree transferred to another Court for execution, though not an application for execution (see Note 10 ante), will be an application to take a step-in-aid of execution within the meaning of clause 5. An application, however, for transfer of a decree to a Court which has no jurisdiction to execute it is not

(1886) 12 Cal 441 (444), Rajkumar Banerys v. Rajlakhs Dabs.

- (1888) 11 Mad 336 (339), Copilandhu v. Domburu. (Step means necessary steps.)
- (1896) 6 Mad L Jour 23 (21), Mahalinga Chettiar v. Narayana Padayachi.
 (1893) 23 Bom 311 (312), Rajaram v. Banaji Mairal.
 (1895) 11 Cal 227 (229), Gunya Perihad Bhoomick v. Debi Sundari Dabea.
- (1895) C2 Cal 827 (829), Aghore Kali Debi v. Prosunna Coomar Banerjee.
 3. (1898) 21 Mad 400 (401) 8 Mad L Jone 53. Rangachariar v. Balaramasami

Note 120

- 1a(1897) 24 Cal 778 (783) . 1 Cal W N 676, Adhar Chandra Das v. Lal Mohum Das.
- (1931) A I R 1931 Lah 705 (706) : 132 Ind Cos 667, Bishan Sahai v. Amir Singh.
 - (1914) A I R 1914 All 296 (298) . 25 Ind Cas 738, Makaraja of Jaspur v. Lalja Sahas.
 - (1910) 8 1nd Cas 675 (676) (Cal), Gaya Loan Office Co. Lid. v. Dhirit Kundal Lal.
 - (1885) 7 All 382 (383, 384) . 1885 All W N 64: 9 Ind Jur 363, Lachman v. Thond: Ram.
- (1903) 13 Mad L Jour 265 (265, 266), Paininma v. Idia Bears.
- (1934) A I R 1934 Cal 234 (235): 149 Ind Cas 999: 60 Cal 1357, Angl Kumar Ghosh v. Hemanta Kumar Ghose.

Note 121

939) All 97 : 180 Ind Cas 403, Sita nd Cas 225, Sheikh Hafeezuddin v.

(1936) A I R 1936 All 369 (369, 370) : 163 Ind Cas 231, Manza Ram v. Badri

Prasad. (1926) A I R 1926 All 600 (660): 95 Ind Cas 26, Saklu Chaudhar, 4. Harbansdeo Rai, Article 182 (Clause 5) Note 121 one in accordance with law even as a step-in-aid of execution. As to whether an application for the transfer of a decree, against the judgment-debter who is dead, is one in accordance with law as a step-in-aid of execution, see Note 85 ante. See also the undermentioned cases. In

```
(1916) A I R 1916 All 293 (291) : 33 Ind Cas 523, Mt. Larets v. Hazan Lal.
(1916) A I R 1916 All 24 (25): 32 Ind Cas 1005, Sant Lal v. Sri Newas Das
(1913) 19 Ind Cas G64 (665) : 35 All 389, Todarmal v. Phoola Kuar.
(1879) 2 All 284 (284), Collins v. Manla Bakhsh.
(1877) 1 All 525 (526), Hussain Buksh v. A. D. Madge.
(1937) A I R 1937 Bom 365 (368) : 170 Ind Cas 877 : I L R (1937) Bom 691,
      In re Janks Prasad Poddar,
(1935) A I R 1935 Cal 640 (640) : 158 Ind Cas 590, Ahad Bux Jamadar v.
      Kinkar Chandra Pal.
(1931) A I R 1931 Cal 312 (318): 58 Cal 832: 182 Ind Cas 149, Sreenath
      Chakravarts . Prayanath Bandopadhya.
(1904) 8 Cal W N 575 (577), Bhabans Churn Dutt v. Partap Chandra
      Ghosh.
(1897) 2 Cal W N 415 (416), Roma Nath Sen v. Gouri Sankar Khairee.
                                                          unno Ghose.
                                                           nan Pundeh
(1931) A I R 1931 Lah 786 (798): 13 Lah 827: 184 Ind Cas 1026, Bombay
      Company Ltd. Karachs v. Kahan Singh.
                       -- -
```

Lat Rasant Sinch v. Lal

has Husam v. Shahraman

(1936) A I R 1936 Pat 313 (314) . 162 Ind Cas 984, Bhagwat Sahay v. Ram Subrat Ram.

(1992) A I R 1922 Pat 301 (302) . 1 Pat 328 . 65 Ind Cas 332, Ramchandra Marwars v. Krishna Lal Marwars. (1937) A I R 1937 Rang 477 (480) : 1937 R L R 287 : 173 Ind Cas 160.

Vans same . Val and Caunt

27 Sind L R 109, Achraj

Ind Cas 399, Bhagwat

(1935) A I R 1935 Cal 640 (640): 158 Ind Cas 590, Ahad Eux v. Kinhar Chandra.

[But see (1934) A I R 1934 Pat 662 (663): 152 Ind Cas 987, Goral Trewar v. Ramathari Pandey.]

2 (1989) A I R 1939 All S7 (59) : 180 Ind Cas 403 : I I. R (1939) All 97, Sila Ram Rav v. Madho Prasad.

(1932) A I R 1932 Pat 809, [311]: 11 Pat 785: 142 Ind Cas 155, Sital

Bee also Note 32 ante.

'Article 182

(Clause 5) Notes 121-122

As to whether so application for the transfer of a decree to a foreigo Court is a step-in-aid of execution, see Note 107 ante.

An application to the transferce Court to send a certificate of the result of the execution and to return the decrea to the Court which passed the decree for further execution, is a step-in-aid of executioo.3

Where a decree is transferred to another Court for execution, an application to the Court which passed the decree to recall it for execution to the parent Court itself, is a step-in-aid.4

122. Application by decree-hulder fur leave to bid, if stepin-aid.—There is a diversity of opinion among the High Coorts on the question whether ao application by the decree-holder for leave to had at the execution sale is one to take a step-io-aid of execution. The Allahabad1 and Bomhay1 High Courts and the Chief Coort of Ough' hold that it is. In Dalel Singh v. Umrgo Singh, their Lordships of the Allahabad High Court observed as follows:

"The fact that a decree-holder is prepared to hid for property and is anxious to purchase is, in the absence of a fraud which capoot be presumed, distinctly an act which modifies the cooditions of the sale to the obvious benefit both of the decree. holder and the sudement-debtor, and brings the decree within nearer distance of complete execution and satisfaction."

The High Court of Calcutte has expressed coofficting views on the point. According to the cases cited below, on explication of this

· 3. (1883) 6 Mad 81 (82), Krishnayyar v. Venkayyar.

(1898) 2 Cal W N 271 (271) (Notes), Chandranath v. Bhudhar.

[See however (1906) 3 Cal L Jour 94 (94) (8 N), Sayaram Chatteris v. Haridas Chatterys. (An application made to the Court which originally passed the decree, for an order that execution costs might be received and for recalling the decree from the Court to which it was sent for execution, is not to be considered as a step-in-aid of execution)]

4, (1939) A I R 1939 Pat 144 (146): 17 Pat 617 (621): 180 Ind Cas 811, Dwarkadas Gobindram v. Saligram Rekhraf.

(1928) A I R 1928 Mad 493 (494) : 110 Ind Cas 829, Mahadum Beg Saheb v. Md. Meera Saheb.

(1935) A I R 1935 Lah 465 (474): 157 Ind Cas 488 (F B), Kanti Naram v. Madan Gopal. (Decree transferred to another Court for execution-Application to Court which passed decree to transfer it for execution to same Court before proceedings in that Court have been reported and certified by that Court is a valid application and is step-in-aid.)

(But see (1922) A 1 R 1922 Bom 359 (360) : 68 Ind Cas 506 : 47 Rom 56, Rangaswami Shetty v. Shethappa. (Decree transferred to another Court-Application for further transfer made to trans. feror Court is not step-m-and as it ceases to be proper Court.)]

Nute 122

- 1. (1900) 22 All 399 (400) : 1900 All W N 129, Dalel Singh v. Umrao Singh. (1891) 13 All 211 (213) : 1890 All W N 230, Bang v. Sikres Mal.
- 2. (1895) 21 Bom 331 (333), Vinayakran Gopal v. Vinayak Krishna.
- 3. (1905) 8 Outh Cas 161 (166). Nawab Safia Begam v. Nawab Rassunnessa. -4. (1900) 22 All 899 (400) : 1900 All W N 129.
- 5. (1896) 23 Cal 690 (692), Raghunundun Messer v. Kallydut Misser.

Article 182 (Clause 5) Note 122

kind is not an application seeking the sid of the Court in execution of a decree, and though it may be in any sense a step-in-aid of execution of the decree, it is not a step by the Court, and before a judgment-creditor can get any benefit, he must show that he asks the Court to take somp step-in-nid of execution. A somewhat different view has been taken in other cases. In Troulokya Nath v. Jyoti Prakash, Bannerjee, J., observed as follows :

"An application to the Court by the decree holder to give him leave to bid is to my mind an application to the Court to take some step, that is, to do something which would aid execution, that is, make it effective by securing a higher price for the property to be said."

In Hira Lal Bose v. Dwija Charan Bose,7 Rampini, J., held that such an application would not be a step in aid of execution, but Mookerjee, J., observed as fallows :

"I do not think it can be rightly affirmed as an inflexible rule of law that the granting of leave to a decree bolder to bid at the sale must in every case, or may not in any case, amount to an aiding of the execution. In determining whether a particular step which the Court is invited to take is or is not n step in aid of execution, regard must be had not merely to the nature of the step to be taken, but also to the surrounding circumstances."

The said view of Mr. Justice Mookeriee has been adopted by a Full Bouch of the High Court of Labore. 7a

There is no reported decision of the Madras High Court directly on the point, but in Vappu Rowther v. Sivakataksham Pillai, the observations of Mr. Justice Venkatasabba Rao, though obiter, tend to support the view that an application for leave to bid is a step in aid nf execution.

An application for leave to bid at the suction sale coupled with a request to set off the purchase money against the decretal amount has been held to be one to take a step-in-aid of execution on the ground that the request to the Court to set off the purchase money against the decretal amount is one in furtherance of the execution.

(1917) A I R 1917 Cal 422 [424] : 37 Ind Cas 788, Jogendra Prosad Milra 1. Asutosh Goswams.

6. (1903) 30 Cal 761 (769, 770, 771) : 8 Cal W N 251.

7. (1905) 3 Cal L. Jour 240 f246, 249); 10 Cal W N 209.

7a (1931) A I R 1931 Lah 81 (83): 131 Ind Cas 100: 12 Lah 153 (F B). Ghanaya Lal v. Nathu Ram. (1884 Pan. Re. No. 88 and 14 Ind Cas 468. Referred to.)

[See however (1929) A I R 1929 Lab 57 [58]: 113 Ind Cas 909, Chanayya Lal & Co. v. Jassa Ram Hira Nand. (Quart-Whether an application by a decree holder for leave to bid is an application to take a step-in-aid of execution.)]

8, (1930) A I R 1930 Mad 588 [589] ; 53 Mad 390 ; 123 Ind Cas 577.

9 (1930) A I R 1930 Mad 588 (589) : 53 Mad 890 : 123 Ind Cas 577, Varra Routher v. Sicalatalsham Pillai.

(1929) 57 Mad L Jour 2 (2) (N B C). (1908) 12 Cal W N 621 [622], Nabadip Chandra Maili v. Bepin Chandra

ż

123, Application for delivery of possession by decreeholder auction-purchaser. - The decisions of the High Courts are not uniform on the question whether, where the decree-holder himself purchases the property in execution and applies for delivery of possession of the property to him, the application is a step-in-aid of execution. According to the High Courts of Madras, 1 Bombay, 2 Calcutta3 and the Punjah Chief Court, 3a such an application is non to take a step-in-aid of executing. They proceed up the view that until possession is secured to the decree-holder, the execution is not complete and the decree cannut be said to he satisfied. The Judicial Commissioner's Court of Nagpur' is also inclined to the same view. On the other hand, the High Courts of Patnas and Allahahads have held that such an application is not one to take a step-in-aid of execution. The reasoning on which this view is based is that execution comes to an end with the sale of the property and that the question whether or not the anction-purchaser obtains possession of the property sold is wholly immaterial for the purpose of the decree and does not in any way affect it.

(1905) 8 Oudh Cas 161 (166), Nawab Safia Begam v. Nawab Rastunnista. (But see (1898) 23 Cal 196 (199), Ananda Mohan Roy v. Hara Sundares,

Note 123

- (1929) 122 Ind Cas 526 (526): 57 Mad L Jour 468 (469), Appathuras Iyer v. Panayappan.
 - (1927) A I R 1927 Mad 298 (290, 291): 99 Ind Cas 677: 50 Mad 403, Mathonkand: Kannan v. Acculla Hajs.
 - (1933) A I R 1933 Mad 745 (746): 145 Ind Cas 397, Apparoo Namar v. Lakshmana Bedds
 - (1901) 24 Mad 185 (188), Lakshmanna Chettsar v. Kannammal,
- 2 (1911) 11 Ind Cas 987 (989); 35 Bom 452, Sadaship Mahadu v. Narayan Vithal.
- 3 (1900) 27 Cal 709 (712, 713) 4 Cal, W N 681, Sariatoola Molla v. Raj Kumar Rov.
- (1902) 1 1nd Cas 430 (431) (Cal), Pran Krishna Dhár v. Juramons Chowkidar.
- (1909) 9 Cal L Jour 67 (67) (8 N).
- (1920) A I R 1920 Cal 230 (231) . 51 Ind Cas 639, Annada Prasonna Sen v. Somorudd: Murdha. (Per Newbould, J.)
- 3a (1904) 1904 Pun Re No. 18, Mt. Lal Debs v. Karsm Bakhsh.
- See (1933) A I R 1933 Nag 369 (370): 147 Ind Cas 582, Nathu Harishanker
 S. Fatusa.
- (1922) A I R 1922 Pat 310 (311): 1 Pat 701: 68 Ind Cas 638, Kamal Nam Singh v Maharaja Bahadur Kesho Prasad Singh.
 - (1923) A I R 1923 Pat 22 (25) . 2 Fat 249 : 72 Ind Can 939, Triloke Nath Jha v. Dansman Jha. [See (1932) A I R 1932 Pat 286 (287) · 11 Pat 513 : 139 Ind Can 843,
- Seshavyer Rajamanner v. Madanmohan Palnank.]
 6. (1928) A I R 1928 All 366 (370) : 50 All 670 : 115 Ind Cas 869, Mohsin Rasa
 Khan v. Haider Balkhi.
- [1909] I Ind Cas 416 (419, 420): 31 All 62 (F B), Bhagnati v. Bannari Lal. [But see (1871) 19 All 477 (478): 1897 AN V N 117, Mot. Lal v. Makund Singh. (Overruled by I Ind Cas 416 (F B)).

Article 182 (Clause 5) Note 124 424. Certification under Order 21 Rule 2 of the Girll Procedure Code.—Before the decision of the Privy Council in Reja Sri Prakach Singh v. The Muhabad Bank, there was a difference of opinion on the question whether a certification under Order 21 Rule 2, Civil Procedure Code, by the decree-holder, of a payment made to him out of Court was firstly an "application" and secondly a step-in-sid of execution. It was held in some cases that the act of certification within the meaning of this Article. It was held in other cases that an application made by the decree-holder to record a certification was an application to take a step-in-aid of execution. In the undermentioned case an oral application was presumed to have been made from the act of certification and it was held that it was one to take a step-in-aid of execution. In the cases cited below,"

(1919) A I R 1919 All 890 (890): 41 All 479: 50 Ind Cas 143, Babu Ram v. Pearey Lal.1

Note 124

- (1929) A I R 1929 P O 19 (23): 114 Ind Cas 581: 8 Luck 684: 56 Ind App 30 (P O).
- 2. (1911) Wind Cas 1023 (1024): 83 All 529, Lecky v. Bank of Upper India.
- (1906) 1906 Pun L R No. 31, Barkat Ali v. Ganga Ram.
- 8. (1925) A I R 1925 Mad 131 (182) : 82 Ind Cas 743, Narayan Nair v. Runhi Raman Nair.
 - Hard.

hon V. Bo

(1903) 26 All 19 (20) : 1903 All W N 172, Kasumri v. Beni Prasad.

(1924) A I R 1924 Nag 185 (189) : 78 Ind Cas 291, Mt. Perabai v. Bharani Prashad. (1922) A I R 1922 Nag 166 (167) : 18 Nag L R 62 : 65 Ind Cas 681, Lack-

man v. Gahreshwar. (1925) A I R 1925 Rapg 26 (27): 2 Rapg 393: 84 Ind Cas 369 and 473,

(1925) A I R 1925 Rang 26 (27): 2 Rang 393: 84 Ind Cas 369 and 4. Maung Law Sen v. Maung Po Thin.

(1886) 12 Col 608 (609), Tarina Das Bandopadhya v. Bishtoo Lal Mukkopadhya.

(1919) 80 Cal L Jour 15 (8 R). (1916) A I R 1916 Cal 356 (857) : 94 Ind Cas 625, Gopal Prosad v. Rajendra

Lal. Dutta.

y. Bali

[But sec (1886) 1886 All W N 23 (24). Kanhia Lal v. Rudar Sahai.

(An univue certificate by a decree-holder under Section 258 of
the Code of Civil Procedure is not a step-in-aid of execution.]

the Code of Civil Procedure is not a step-in-aid of execution.]

um Ahammed Chowdkury.

5. (11

Article 182 (Clause 8) Note 124

the view was taken that the act of certification was not an application at all. The decision of their Lordships of the Privy Conneil in Sri Pralash Singh's case referred to above must now be taken to have set the conflict at rest. The question in that case was whether the mere certification by the decree-holder should be considered to be an application on as in be governed by the provisions of Article 181. After a review of the provisions of Order 21 Rules 1 and 2 of the Code of Civil Procedure, their Lordships have held that a mere certification by the decree-holder of a payment made to him out of Court is not an "application" within the meaning of Article 181 and further, the fact that an application is actually filed for the recording of such certification did not really alter the nature of the procedure and convert what was really no more than a certificate into an "application" within the meaning of Article 181.

Their Lordships, however, did not in the case referred to above think it necessary to express any opinion as to whether a certification would amount to "an application to take a step in aid of execution of the decree" within the meaning of clause 5 of this Article. But it has heen held in cases decided after the date of the said Privy Council decision that the same reasoning would apply in interpreting the word "application" occurring in this Article and that, therefore, a certification would not be an application at all. I has further been hold that the act of certification is not a step-in-aid of execution as, firstly it is not a step to be taken by the Court, and secondly that anch step does not in any view further the execution of the decree.

But though a certification may not operate so as to give a fresh starting point under clause 5 of this Article, it may enable a fresh

- (1929) A I R 1929 All 629 (635) 51 All 237 112 Ind Cas 73 (F B) Jots Pra-
- (1930) A I R 1930 All 461 (611) 127 Ind Cas 424, Bansgopal v. Mewa Ram. (1933) A I R 1933 All 364 (365, 366) 55 All 393, 146 Ind Cas 836, Adya Prasad Singh v. Lat Grish Bahadur Pal.
 - (1931) A I R 1931 Cal 719 (724) . 59 Cal 760 134 Ind Cas 922 (F B), Amar Kruhna Chaudhury v. Janet Bandhu Biswas.
 - (1930) A I R 1930 Rang 64 (65) . 126 lnd Cas 540, Maung Tun Hlaing v. U Aung Gyaw.
 - (1936) A I R 1936 Pat 386 (388) . 163 Ind Cas 915, Maheshwar Charan v.
 - Dineshwars Charan (1934) A I R 1934 Oudh 426 (427) 9 Luck 298 147 Ind Cas 766. Surasya Began v Trilois Nath. (There cannot be any "final order" in such
 - (1932) A I R 1932 Oudh 148 (151) . 137 Ind Cas 768 7 Luck 590 (FB), Ram
- Bharose v. Ramman Lol 7. (1931) A I R 1931 Cal 179 (1725) 131 Ind Cas 922 : 59 Cal 760 (F B), Amar Krishna Choudhury v. Jagat Bandhu Bisnas.
 - (1933) A I R 1933 All 364 (365, 366) . 55 All 393 146 Ind Cas 636, Adya Prasad Singh v. Lal Girish Bahadur Pal.
 - (1935) A I R 1935 All 259 (261) 157 Ind Cas 1052, Hars Ram v Himan
 - (1936) A I R 1936 Mad 118 (119) · 159 Ind Cas 544 59 Mad 424, Union Board, Pentapada v. Venkata Srunyasa Charyalu.
 - [But see (1939) A I R 1933 All 49 (50) 143 Ind Cas 324, Jan Karan v. Panchain Akhara Chota Naya Udan Nanah Shahi. (Assumed for purposes of argument.)]

Article 182 (Clause 5) Notes 124-125

period of limitation to be computed under the provisions of Section 20 ante. See Note 30 to Section 20 and the undermentioned cases."

125. Application for payment out of monies lying in Court.— Where money is paid into Court in satisfaction of a decree or where money is lying in Court as a result of the realizations in execution of a decree and the decree-holder applies for the payment out to him of such monies in pro tanto satisfaction of the decree, the question arises whether the application for such payment out is one to take a step-in-aid of execution. The general trend of opinion of all the Courts except the High Courts of Calcutta and Labore is that such an application is one to take a step-in-aid of execution within the meaning of this Article.1 The reason for this view has been explained in some cases as being that the execution of a decree is not complete

```
S. (1927) A I R 1927 All S27 (S2S) : 100 Ind Cas 574, Javala Sahas v. Blam
        Singh.
```

(1912) 15 Ind Cas 523 (524) : 15 Oudh Cas 284, Ram Sarup v. Jagannath Praess.

(1917) A I R 1917 Cal 422 (425) : 37 Ind Cas 788. Joyendra Prasad Kara v. Ashutosh Goswamy.

(1936) A I R 1936 Ondh 297 (297, 298) : 162 Ind Cas 717, Mays Pralash v. Tuln Fam.

(1922) A I R 1922 Med 66 (66) : 65 Ind Cas 880, Arunackalam Chettar v. Panchali Padayachi.

(1935) 39 Cal W N 961 (966), Shamsul Hue v. Ablul Rahman. (1919) A I R 1919 All 211 (212) : 52 Ind Cas \$62, Qadam Singh v. Nathu Sinch.

(1936) A I R 1936 Nag 281 [282] : 163 Ind Cas 804 : ILR [1987] Nag 106, Baynath v. Kanhawalal. (1915) A T R 1915 Sind 48 (49): 30 Ind Cas 51: 9 Sind L R 27, Naracomal

v. Terathmal. (1933) A I R 1933 Sind 365 (366) : 147 Ind Cas 30, Kaleandas Balchard v. Mahomed Ehan.

Note 125

1. (1988) A I R 1988 AM 910 (212) : I L R (1988) AM 842 : 175 Ind Cas 188. Latafat Ale Khan v. Kaluan Mal.

(1901) 1901 All W N 29 (29), Kali Charan v. Harden Das. (1888) 6 All 866 (867) 1884 All W N 118, Paran Singh v. Jawahir Singh.

(1882) 1882 All W N 184 [184], Kushori Lal v. Sham Karan. (1901) 24 Mad 188 (193, 194) : 10 Mad L Jour 342, Venlataramanamma v.

Purushottam.

(1919) A 1 R 1919 Mad 929 [930] : 45 Ind Cas 226, Thangi Shettithi v. Duja Shetti.

(1898) 17 Mad 165 (166) : 9 Mad L Jour 296, Koormayya v. Krishnamma. 1000) and and a fee story and a said and

1. :: wami Nawlen

(1895) 22 Bom \$40 (343), Bapuchand v. Mugutras.

(1894) 19 Bom 261 (267) : 1894 Bom P J 64, Keshavlal v. Petamberdas. (1925) A I R 1925 Rom 443 [443, 414) : 89 Ind Cas 228, Mulchand v.

Jamanbs. (Application need not be in writing) (1916) A I R 1916 Ondh 153 (154): 18 Oudh Cas 359: 33 Ind Cas 557, Dharam Raj Kuar v. Lachhman Bhuj.

(1827) 11 C P L R 161 (163), Lachman Jat v. Hira Darri. (But see (1883) 5 All 289 (292, 293): 1883 All W N 83, Radha Prasa?

Sench v. Bhagwan Ras. 1911) 12 Ind Cas 784 (784) (All), Behars Lal v. Raghunandan.] until the decree-holder actually withdraws the amount from Court in satisfaction of his decree. In the undermentioned cases the reason for this view was stated to be that, in order to make the amount available to the decree-holder, an order of the Court was necessary after a consideration of various questions such as the sufficiency of the amount of decretal money deposited by the judgment-debtor, whether the deposit was made on any condition, whether there are any petitions for rateable distribution, etc.

The High Courts of Calentta* and Labors* have, on the other hand, held that, as a general rule, such an application is not one to take a step-n-and of execution, where the judgment-debtor does not contest the withdrawal of the amount. The ground of this view is that as soon as the amount is realized in excention or received by the Court in satisfaction of the decree, the decree is to that extent satisfied and the execution complete, that the order for the payment of the amount is merely a ministerial act, and further that a person who takes steps to aquire the fruits of the execution of the decree

- (1938) A I R 1939 All 210 (212) . I L R (1938) All 342 . 175 Ind Cas 186, Lata fat Ali Khan v. Kalyan Mal.
 - (1916) A I R 1916 Oudh 153 (153): 18 Oudh Cas 359: 33 Ind Cas 557, Dharam Raj Kuar v. Lachhman Bhuj.
 - (1896) 22 Bom 310 (313), Bapuchand Johnam Gujar v. Mugut Rao.
- (1916) A I R 1916 Oudh 153 (153): 18 Oudh Cas 359: 33 Ind Cas 557,
 Dharamraj Kuar v. Lachman Bhuj.
 - (1919) A I R 1919 Mad 929 (930): 48 Ind Cas 226, Thangi Shettithi v. Buja Shetts.
- 4, (1894) 10 Cal 549 (550, 551), Fazal Imam v. Metta Singh.
 - (1885) 11 Cal 227 (229), Gunga Pershad Bhoomick v Bebi Sundari Dabea. (1881) 8 Cal 89 (91). 10 Cal L R 272, Hem Chunder Chowdhry v Brojo
 - Soondury Dabes. (1875) 24 Suth W R 839 (340), Woodo Tara Chowdhrain v. Abdul Jubbur
 - Choudhry. (1806) 6 Suth W R Misc 49 (49), Kishen Mohun Jush v. Chunder Kant
 - Chuckerbulty
 (1906) 10 Cal W N 354 (358) (F B), Apurba Erishna Roy v. Chundermoney
 - [But see (1867) 8 Suth W R 274 (275), Jogesh Prokash Gangooly v. Kales Koomer Roy.]
- 5. (1912) 14 Ind Cas 335 (337) (Lah), Ram Das v. Kanshe Ram.
- (1903) 1909 Pun Re No. 103 1908 Pun L R No. 207 · 1903 Pun W R No. 142 (F B), Kasu v. Atar Singh.
 - (1938) A I R 1938 Lah 138 (139) 175 Ind Cas 260, Amlotchand v. Hoshiar Singh.
 - (1938) A I R 1938 Lah 678 (679) I L R (1938) Lah 586 178 Ind Cas 995, Hira Lai v. Mohna Singh.
 - (1881) 1881 Pun Re No. 107, Nawab Saadat Als Khan v Nawab Muham. mad Als Khan
 - (1888) 1888 Pun Re No. 27, Mulchand v. Kour Singh.
- (1908) 1908 Pun Re No. 103 1908 Pun L P. No 207 · 1903 Pun W R No. 142 (F B), Kasu v. Atar Singh.
 - (1981) 1981 Pun Re No. 107, Nawab Saadat Als Khan v. Nawab Muhammad Als Khan.
- (1908) 1908 Pun Re No 103 1908 Pun L R No 207 1908 Pun W R No 142 (F B), Kasu v Atar Singh.
- (1938) A I R 1938 Lah 138 (139) 175 Ind Cas 260. Amolahchand v. Hoshiar Singh

Article 182 (Clause 8) Notes 128-126 cannot possibly he said to take a step-in-aid of the execution of the decree. It was held in the undermentioned case that where the payment out to the decree-holder is contested by the judgment-debtor, then a judicial order would he necessary for paying the amount to the decree-holder and that, in such a case, the application by the decree-holder would be one to take a step-in-aid of execution.

In the cases cited helow, the guardian of the judgment debtor under a mortgage decree obtained the sanction of the Court to raise mocey by mortgaging the mortgaged property, and mortgaged the property to a third person who paid into Court a certain amount towards the decree. The decree-holder applied for payment out of this amount. It was held that the money was paid into Court to the credit of the suit and was not realised in execution of the decree and that the application for the payment of such money was not one in aid of the accounting the decree.

It is submitted that the true test seems to be to see whether into particular case the decree-holder could, at the time of his application, have executed his decree for such amount. If he could not, then the application cannot be a step-in-aid of execution. If, on the other hand, he could execute the decree, then the application or payment out would be a step-in-aid of execution of the decree. In Khajah Mahomed Hossein Khan v. Syud Looif Ali Khan, a case ander the Act of 1859, cortain monies were deposited in estisfaction of the decree hut, for a considerable time, the Court declined to pay the money out to the decree-holder. It was held that under such circumstances the decree-holder could have executed the decree for this amount and that the application for payment out was a proceeding to enforce the decree of

In view of the above discussion, it is submitted that the views of the Calcutta and Lahore High Courta appear to be sound on principle.

An application by the holder of a decree, A, for the rateable distribution of monies received in execution of another decree against the same judgment-dehtor and for payment out of the amount distributable to him is a eter-in-aid of execution of the decree of A.¹¹

126. Application for substitution of representatives. — The Code of Civil Procedure does not specifically provide for or contemplate an application being made merely to bring on record the legal

⁷a (1908) 1908 Pun Re No. 103 : 1908 Pun L R No. 207 : 1908 Pun W R No. 142 (F B), Kasu v. Mar Singh. (12 All 399, Dissented from.)

[[]See also (1938) A I R 1939 Lab 139 (199): 175 Ind Cas 260, Amolakchand v. Hoshuar Singh]

^{8. (1908) 1908} Pun Re No. 103: 1908 Pun L R No. 207: 1908 Pun W R No. 142 (F B), Katu v. Alar Singh.

^{9. (1925)} A I B 1925 Mad 703 (704): 67 Ind Cas 989, Balaguruswams Naicken v. Curusurami Naicken. (See also (1899) 22 Mad, 448 (452), Appasam: Naickan v. Jotha

Nackan.] 10. (1672) 10 Suth W R 463 (463).

^{11. (1903-04) 8} Cal W N 302 (385). Basj Nath Prosad v. Ghanshyam Dass.

representatives of the decree-holder or the judgment-debtor, as the

case may be.

Article 162 (Clause 6) Notes 126-128

But such an application, if made, would be one in accordance with law inasmuch as it does not contravene the law, and would be one to take a ster.in-aid of execution of the decree ¹

Where an application for evention contains also a prayer for the substitution of the legal representatives of the decessed judgment. dehtor, and the application is not one in accordance with law in so far as it is one for execution, it may nevertheless operate to save time as an application to take a step-in-aid of execution, having regard to the prayer for substitution. See also Note 109, ante.

127. Application for substitution of name of transferee of decree, if step-in-aid. — See Noto 78, ante.

126. Other Illustrative instances of step-iu-aid. — The following applications have been held to be to take steps-in-aid of execution —

1. Application for the substituted service of notice of execution,1

Note 126

- Independent application to substitute legal representative of judgmentdebtor:
 - (1927) A I R 1927 Nag 808 (309, 310); 24 Nag L R 36: 103 Ind Cas 279,
 - Ramchandra v. Uka (1907) 80 Mad 541 (543) : 17 Mad L Jour 485 : 3 Mad L Tim 21, Mahalimoa
 - Moopanar v. Kuppancharsar. (1925) A I R 1928 Oudh 77 (78): 79 Ind Cas 880, Rudra Pratab Singh v. Shee Prasad.

Application for substitution of legal representative of judgment debtor prading execution application (1927) A I B 1927 All 608 (608, 609); 103 Ind Cas 244, Manmohan Das v. Rashduddan,

Application for substitution of legal representatives of decree-holder . (1906) 17 Mad L. Jour 475 (475), Shrimwasa Iyengar v, Dharm Mudaly,

(26 All 301, Followed.)

(1894) 1894 Pun Re No. 27, Kundanial v. Mt. Makhans (1906) 9 Oudh Cas 261 (282), Makrand v. Ramcharan.

(1926) A I R 1926 Cal 267 (270) . 85 Ind Cas 657, Birendra Chandra Singh Bahadur v. Tulsi Charan Ghose.

(1918) A I R 1926 All 293 (200) . 103 Ind Cas 412 . 50 All 621, Moham Emph v. Jagat Singh.

Dinan Chand.

berdas Tribuvandas.

2. (1932) A 1 R 1932 Mad 19 (20) . 134 Ind Cas 59 51 Mad 852, Chinna Vel Nauch v. Venhatarama Nauch.

ish v. Kumara

ing for the legal

sufficient to give a fresh starting point for limitation even if it contains errors in the matter of relief)

Note 128

1. (1914) A I R 1914 All 892 (393): 36 All 439: 24 Ind Cas 200. Amina Bib.

Article 182 (Clause 8) Note 128

- Application for summoning a necessary witcess in execution proceediogs, or an application for the attachment of the judgment-dehter's property in execution, or an application for issue of any other process.
- 3. Application to allow the sale of the property of the judgmentdehtor subject to the mortgage of the third party-claimant.
- Application in a pending application for execution to supply certain defects in the latter in respect of the mode of execution.
- 5. Application to stay the sale io execution but to continue the
- attachments.

 6. Memo praying the Court to hold a sale io connexioo with a pending exception.

 9
- 7. Application for contionation of an execution sale io order to
- secure the proper attendance of hidders.9
 8. Application for the correction of a decree by the addition of
- ioterest omitted to he meotioned io the decree. 19
 9. Application by holder of decree for redemption to seed octice to judgment dehtor asking him to withdraw the mooey deposited
- by the former in Court.¹¹
 10. Application for revival of previous execution proceedings.¹²
- The following have been held not to constitute ateps.io.aid of execution -
 - 1. Application for stay of proceedings pending appeal.13
- 2, (1924) A I R 1924 Oudh 177 (178): 74 Ind Cas 816, Mathura Singh v. Eardhas Pathak.
 - (1918) A I R 1918 Cal 635 (636): 40 Ind Cas 1005, Redar Nath Deyv. Lakhi Kanta Dey. See also Note 117 Foot-Note (4).

aid aich aew

t see

- i. 4. (1906) S All L Jour 815 (816, 818) : 1906 All W N 269, Lachman Darv. Narain Das.
- (1888) 15 Cal 863 (365), Lalraddi Mullick v. Kala Chand Bera.
- 6. (1905) 1905 Pun L R No. 79: 1905 Pun Re No. 27: 1905 Pun W R No. 2. Sardar Bishen Singh v. Ganga Ram.
- 7. (1881) 2 Mad 218 (218), Nukanna v. Ramasami.
- 8. (1918) A I R 1918 Mad 1140 (1141) : 33 Ind Cas 152, Ghulam Karusha v. Bhuvaraha Iyengar. 9. (1915) A I R 1915 Mad 314 (315) : 25 Ind Cas 53, Desiredd: Yellamandar v.
- O. (1929) A I R 1929 Lab 103 (104): 114 Ind Cas 55, Nanak Chand Rama
- Nand v. Jan Gopal Gokal Chand.

 11. (1911) 9 Ind Cas 337 (339): 14 Oadh Cas 10, Jageshar Singh v. Bhugwan
- Bakhsh Singh.
 12 (1919) A I R 1919 Cal 709 (710): 64 Ind Cas 727, Chandra Kumar Dhar v.
 Ramdin Dhar.
- (1894) 1894 Pun Re No. 106, Ghulam Jslani v. Yusuf Shah. 13 (1993) A I R 1923 Rom 218 (223): 76 Ind Cas S17, Pandey Dagadu v. Jamadas Cholu Mal.

2. Application for a reconstruction of a decree destroyed by fire.14

.º 3. Mere filing of an affidavit by the decree bolder that there are no incumbrances on the property to be sold.¹⁵

 Application for an ejectment of a tenant against whom a decree for arrears of rent had been passed.¹⁶

- 5. Application for the amendment of the order absolute for sale 17
- Application to withdraw a pending execution petition with leave to institute another at some future time.
- 7. Application by a decree-holder purchaser to receive from him the poundage fee in respect of the property purchased and an application to be allowed to set off the purchase money against the decree.¹⁹
- 8. Deposit of pre-emption amount.29

129. "Final order." — Under clause 5 of the Article as it stood prior to 1927, the date of the application in accordance with law to the proper Court for execution or to take a step-in-aid of execution, furnished a fresh starting point of limitation independent of the result of the application. Under the amended Article, time has been made to run from the date of the final order on such an application. In Khalil Ur Rahman Khan v. Collector of Elah.

14. (1984) A I R 1934 Bom 113 (114) : 150 Ind Cas 866, Retarchand v. Chandu

(1909) 5 Ind Cas 660 (661) (Cal), Raj Gur Sahay v. Ishwardhari Singh.
15. (1924) A I R 1924 All 611 (612): 78 Ind Cas 631, Chiranji Lal v. Ganga

Sahai. 16. (1905) 28 All 131 (133) 2 All L Jour 661 · 1905 All W N 213, Maharans of Dumraon v. Buddha Kumwari.

17. (1905) 27 All 575 (577) 1905 All W N 108 2 All L Jour 287, Ahsan-ul-lah y Dalkhim Din

18. (1896) 23 Cal 817 (821), Taral Chunder Sen v Gyanada Sundari.

(1919) A I R 1919 Pat 188 (189) 50 Ind Cas 444, Syed Rafakat Hussain v. Syed Mehds Hussain.

[But see (1893) 16 All 75 (77) 1893 All W N 219, Ram Narain Rai v. Bakhtu Kuar.]

(1805) 23 Cal 196 (190), Ananda Mohan Roy v. Hara Sundars.
 (1920) A I R 1929 All 936 (1937)
 All 996. 122 Ind Cas 604, Anrup Missir v. Ram Harakh.

Note 129

1. (1914) 1914 Mad W N G4 (64) (S N).

(1891) 13 All 343 (345) 1691 All W N 119, Jawahir Mal v Kistur Chand. (1896) 1696 Bom P J 753, Premraj Chandrabhan v Abdul Rahman.

(1876) 25 Suth W B 106 (106, 107), Lala Hurree Sunkur Sahoy v. Erishna Kant Dutt.

dar Kar.

(1936) A I R 1936 Rang 271 (272) 163 Ind Cas 403 . 14 Rang 550, Arjundas Bisumalal v. U Ka Ya

(1937) A I R 1937 Cal 16 (18) 169 Ind Cas 739, Ananda Lal Chahravarthy v. Sm Katyans Debs.

nd Cal 747, Nourangs

Article 182

(Clause 5) Notes 128-129 Article 159 (Clause S) Note 129

their Lordships of the Privy Council observed as follows:

"It is to be noted that by the said Article, before ameniment, the date of the application for execution was the time from which the period of limitation was to run, and it was not until the amending Act of 1927 was passed that the remaind the application, viz., the final order passed on the application, homme the material time."

It follows that what is material under the amended Article is thus the date of the final order on the application and not the date of the application itself. The question consequently arises at to what is the meaning of the expression "final order" for the purpose of clause 5 of this Article. The word "order" has been defined in Section 2 sub-section 14 of the Code of Civil Procedure as meaning the formal expression of any decision of a Civil Court which is not a decree. The Gode and the Limitation Act being enactments in pari materia, the word "order" in this Act must be construed as having the same meaning as it has under the Code, unless, of course, there are sufficient reasons to the contrary." It has been held that the "order" need not be one passed on the merits; nor need it be judical determination of the matter involved in the application The contrary view which has been held in some cases, namely, that the order must be a judicial one is, it is submitted, not correct.

But, in order to give a fresh starting point of limitation union clause 5, it is necessary that the order must be a "final" cur. The word "final" means "pertaining to the end or conclusion" and reless to that which brings with it an end. In other words, it is used in

L (1988) A I R 1932 Mad 113 (115) : I L R (1988) Mad 825 : 176 Ind Cas 722, Halku Fama Relli v. Methal Paya. (1997) A I B 1937 Mal 985 (391) : I L R (1987) Mal 616 : 168 Ind Cas 83

⁽F. E), Chilambera Nadar v. Pama Nadar.

⁽¹⁹⁸⁶⁾ A I R 1986 Pat S13 (S14): 162 Ind Cas 984, Ebagrat Sakm v. Fam Subul Firm.

⁽¹⁹⁸⁵⁾ A I R 1985 AN 757 (757) : 154 Ind Cas 718, Hafu Tadia v. Farshade Lab-Marokar Lal

⁽¹⁹⁰²⁾ A I R 1902 Octh 145 (149) : 7 Lack 590 : 137 Ltd Cas 765 (F F), Earl Bharose v. Ramman Lal. S. See Note 18 of the Preamble to this Act.

^{6. (1998)} A I B 1988 Mad 113 (115) : I L B (1988) Mad 828 : 176 lad Cas 75%, Mathurama Rollin v. Motilat Paga.

⁽¹⁹⁷⁷⁾ A I R 1907 Med 285 (282): I L R (1887) Med 616: 168 Ind Car 501 (F F), Chalambera Nadar v. Firma Nadar.

^{(1938) 1936} Mad W N 547 (548), Mettapa Padaparki v. Rajapopalan. 7. (1988) & I R 1988 Mad 115 (115) : I L R (1988) Mad 226 : 176 Ind Cas 75%

Mathurana Reads v. Motical Pass. (1987) & IR 1937 Mad 383 (839): ILR (1987) Mad 616: 168 Ind Cas 50 (F. P., Chaigmhera Nain v. Rama Nain . (Per Pandrang P.W.)

⁽¹⁹³⁶⁾ A I R 1936 All \$10 (524) : I L R (1937) All \$72: 166 Ind Cas 106 (F.F., Mchammad Tage Khan v. Raja Rava. S. (1886) A I R 1986 Mad 615 (514) : I L R (1987) Mad 112 : 168 Ind Cas 554.

Lesaralic v. Officel Receiver, West Taxare. (1930) & 1 R 1930 Par 513 (514); 162 Ind Cas 984, Ekappent Sakaj v. Fire Salvet Fare.

^{9.} Webster's Dictionary.

contradistinction to the word "interlocutory," 10 It has accordingly been held generally that a final order implies that the proceeding has been terminated so far as the Court passing it is concerned, though the order need not be a judicial determination of the rights of the parties. In Mohammad Tagu, Raja Ram, in an order was made in the following terms: "Execution struck off for partial satisfaction of the decree. Costs on the judgment-debtors." The question was whether the order was a final one or was merely a provisional one suspending the application for a time. It was held by the Full Bench that the question whether an execution case is still pending or has been terminated by an order must depend upon an interpretation of the order and the inference to be drawn as to the Court's intention and that the order striking off in the particular case was one which terminated the proceeding and was therefore a final order. Their Lordships observed as follows:

"We ere unable to hold that the words "final order" must mean the order which finally adjudicates upon the rights of the decree-holder on the one hand end the rights of the judgmentdeltor on the other

"If that were the meaning, then it may in some cases work herdship on the decree-holders themselves. In the absence of any euch order, time would still begin to run from the date of the lest application made in eccordance with the law or step taken in end of execution, whereas the amended clause 5 appears to have been intended to give to the decree-holder a fresh start from the date when the last execution matter or proceeding terminated. Again, there may be cases where the decree-holder may himself not like to go on with the application and may get it dismissed. It would be too much to hold that in such a case, as there has been no proper adjudication upon the rights of the parties, he cannot have a fresh start for purposes of limitation Again, the application may be dismissed on account of want of prosecution or 'default or for some other reason. In all such cases the execution proceeding must be deemed to have terminated and the order passed thereon a final order, though there

¹⁰ Wharton's Law Lexicon.

⁽¹⁹³⁴⁾ A I R 1934 Pesh 23 (24) 149 Ind Cas 136, Punjab National Bank, Ltd v. Dina Nath.

 ⁽¹⁹³⁴⁾ A I R 1934 Pesh 28 [24]. 149 Ind Cas 136, Punjab National Bank, Ltd. v Dina Nath.

⁽¹⁹³⁶⁾ A I R 1936 Mad 613 (614) I L R (1937) Mad 112 . 163 Ind Cas 354, Kesavuloo v Official Receiver, West Tanjore.

⁽¹⁹³³⁾ A I R 1933 Rang 87 [88] : 142 Ind Cas 435, Kaduresan Chettiyar v.

⁽¹⁹³⁸⁾ A I R 1938 Mad 113 (115] I L R (1938) Mad 326: 176 Ind Cas 753, Muthurama Redds v Motilal Daga

⁽¹⁹³⁷⁾ A F R 1937 Mad 395 (392) J L H (1937) Mad 616: 168 Ind Cas 561 (F B), Chidambara Nadar v. Rama Nandar. (Per Venkataramana Rao, J)

⁽¹⁹⁹²⁾ A I R 1932 Oudh 148 (151) 7 Luck 590 187 Ind Cas 768 (F B), Ram Bharosey v. Ramman Lai. 12. (1936) A I R 1936 All 820 (824). ILR (1937) All 272 166 Ind Cas 106 (F B).

Article 182 (Clause fi) Note 129

has been really no adjudication upon the rights of the parties, and the matter can be re-agitated on a fresh application being made to the execution Court. We think that where the Court intends to dispose of the matter completely and no longer keep it pending on its file, and does not merely suspend the execution or consign the record to the record room for the time being, the order must be deemed to be a final order which will give a fresh start for purposes of limitation, and that the proceeding not being pending, there would in such a case he no question of revival."

Thus, where the decree-holder applied for execution asking for issue of a notice to the indgment-debtor and an order is made issuing such notice which was made returnable twelve days later and on the said date the case was closed at the decree-holder's request, it was beld by the High Court of Rangoon that the final order was the order closing the case which terminated the proceedings and not the order issuing the notice.13 Where a petition was returned for nmendment and on re-presentation it was rejected, it was beld by the High Court of Madras that the order of rejection terminated the proceedings so far as the Court was concerned and that it was final order.14

See also the case cited below.15

There is a conflict of opinion on the question whether an order returning an application for amendment constitutes a "final order" within the meaning of clause 5 of this Article. It has been held in the undermentioned cases16 that it is a final order, the ground of such view being that the expression "final order" meant the last order in point of time. But this view has been dissented from in other cases?" wbich, as has been seen already, hold that the words "final order" refer to an order which terminates the proceeding so far as the Court passing it is concerned and that an order returning the application for correction does not terminate the proceeding. In Municipal

^{13. (1933)} A I R 1933 Rang 67 (SS) : 142 Ind Cas 435, Kadiresan Cheliyar v. Maung San Ta.

^{14. (1937)} A I R 1937 Mad 385 (392) : I L R (1937) Mad 616 : 168 Ind Cas 561 (F B), Chidambara Nadar v. Rama Nadar.

^{15. (1935)} A I R 1935 All 909 (910) : 157 Ind Cas 278, Mahesh Prasad v. Shyars Lal. [Petition dismissed after recording part payment-Decree-holder grapting two months' time-Date of final order is of date of dismissal

and not that at the end of two months.) 16 (1936) 1936 Mad W N 547 (517), Shunmuga Pathar v. Swammatha Pathar.

^{(1936) 1936} Mad W N 547 (548), Mottayya Padayachi v. Rajagopalan-(1937) A I R 1937 Mad 385 (392): 1 LR (1937) Mad 616: 168 I. C. 561 (FB),

Chidambara Nadar v. Rama Nadar. (Per Pandrang Row, J.) 17. See cases cited in Foot-Note (11) above.

⁽¹⁹³⁶⁾ AIR 1936 Mad 613 (614): ILR (1937) Mad 112: 163 Ind Cas 854, Kesavuloo v. Official Receiver, West Tanjore.

[[]See also (1938] A I R 1933 Mad 540 (540) 144 I. C. 167, Muhammad Abu Balkar Maracair v. Ramakrıshna Chettiar. (Assumed).)

Article 182 (Clause 5) Notes 129-130

Council, Tanjore v. Sundaresan,18 it was held that where a petition is returned and not re-presented, the proper way to deal with it is to treat it as not having come into existence at all. In Kesavuloo v. Official Receiver, West Tanjore19 it was held that when an order is made returning the application, it does not deal judicially with the matter of the petition but contemplates a final order to he passed at a subsequent stage when the defects are remedied and the petition is re-presented and that consequently it is not a final order within the meaning of this clause. It is submitted that the last two yiews are not correct. As to the first of the two views, it may be stated that hefore the amendment of 1927, an application was considered to bave heen presented notwithstanding it was returned and not re-presented at all. It is not clear why, under the Article as amended. an application, returned for correction, should be regarded as not having been presented at all. As to the view in Kesavuloo's case.19 it has been seen already that it has been held in a number of cases that the order need not be a judicial determination of the matter in dispute.

But, though a final order means an order that terminates the proceeding so far as the Court passing it is concerned, it is not clear why an order returning the application should not be regarded as terminating the proceeding. In the undermentioned case, to no doubt. it was beld that an application returned for amendment and not represented must be considered to be pending till re-presented by tho decree-bolder, but this view has not been accepted in a number of other cases.21 It is difficult to regard a petition that has been returned as being a pending one as long the decree holder considers it convenient not to re-present it. If then, it is not pending, it must necessarily have been disposed of and the order that disposed it of was the order returning the petition, which would therefore be a final order. The fact that when the petition is re-presented it would he deemed to have been presented on the date when it was first presented, does not necessarily raise the inference that the application was pending during the interval.

Where the final order on an application is appealed against, the order of the Appellate Court in such appeal will be the final order under the clause which will give a fresh starting point of time.22

430. Order transferring decree for execution. - An order transferring a decree for execution to another Court is a "final order"

^{18. (1939) 1939} Mad W N 426 (427).

^{19. (1936)} A I R 1936 Mad 613 (614) I L R (1937) Mad 112 163 Ind Cas 354. 20. (1933) A I R 1933 Mad 540 (540) 144 Ind Cas 167, Muhammad Abu Bakkar Maracasr v. Ramakrishna Chelisar

^{21. (1936) 1936} Mad W N 547 (547), Shanmuga Pathar v. Suammatha Pathar. (1939) 1939 Mad W N 426 (427), Municipal Council, Tanjore v. Sundaresan. [See also (1936) 1936 Mad W N 547 (548), Mottaya Padayachs v. Rajagopalan. (Assumed)]

^{22, (1935) 157 1}nd Cas 604 (604) (Lah), Abhe Ram v. Bhola,

Article 182 (Glause 6) Notes 130-132 within the meaning of clause 5 of the Article, inasmuch as so far as the Court transferring the decree is concerned, the proceeding is terminated by the order. In Bhagwart Schay v. Ram Sukrit Ram. Wort, J., while feeling himself hound by the previous decisions of the Patna High Court to the above effect, expressed his own viow that such an order would not be a "final order" on the ground that a "final order" meant a judicial order. In Hajis Uddin v. Parsheli Lai Hanohar Lai, it was held that the date of the final order means as the date on which the certificate of transfer was handed over to the decree-holder and not the date on which the Court directed the office to prepare the certificate of the transfer.

130a. Order returning application. - See Note 129 ante.

131. Final order need not be in accordance with law.—Clause 5 merely requires that there should be a final order on an application in accordance with law. Where there is no application in accordance with law, no fresh etarting point is given by any order passed on such application. It is, bowever, only the application that should he in accordance with the law. It is not necessary that the order on the application should he in accordance with law in order to give a fresh starting point of limitation.

13ia. Retrospective operation of amendment of clause 5.—
The amendment of the year 1927 will not operate retrospectively so
as to affect vested rights, but will otherwise govern all applications
filed after the date of the amendment. Where an application, filed
on 24.4-1925 was dismissed on 8.8-1925 and the next application
for execution was filed on 8.8-1928, the amendment having come
into force in the meanwhile on 1.1-1928, it was held by the High
Court of Patra that the application was within time having been
made on the last day of the period of three years calculated from
8.8-1925, the date of the final order on the last application.

CLAUSE 6.

132. Clause 6. — This clause was substituted by Act 9 of 1927 for the old clause which ran as follows:

"(Where the notice next hereinafter mentioned has been issued) the date of issue of notice to the person against whom

Note 130

- (1934) A I R 1934 Pesh 23 (24): 149 Ind Cas 136, Punjab National Bank, Ltd. v. Dina Nath.
- 2. (1936) A I R 1936 Pat 813 (314) : 162 Ind Cas 984.
- 8. (1935) A I R 1935 All 757 (758) : 154 Ind Cas 718.

Note 131

- 1. (1937) A I R 1937 Mad 760 (762): 174 Ind Cas 28, Appaji Chelli v. Govindasuoma Redds.
- 2. (1934) A I R 1934 Rang 101 (103) : 149 Ind Cas 98, U Nyo v. U Po Hlaing.

Note 131a

1. (1930) A I R 1930 Pat 207 (207): 127 Ind Cas 572, Sapani Patra v. Damo dar Kar.

execution is applied for to show cause why the decree should not be executed against him, when the issue of such a notice is required by the Code of Civil Procedure, 1908."

In view of the fact that by the same Act clause 5 was amended so as to make time run from the date of the final order on an application for execution or to take a step-in-aid of execution, and not from the date of the application as the case was before, the above clause 6 was repealed and in its place was enacted the present clause 6 has to the cases decided under the repealed clause 6, see the undermentioned decisions.

CLAUSE 7.

133. Clause 7 — General. — This clause provides that where the application is for the enforcement of a payment which the decree or

Note 132

- 1, (1993) 1993 Bom P J 112, Dallu v. Narayan Balaram.
 - (1932) A I R 1932 Pat 222 (221) 138 Ind Cas 91 11 Pat 546, Sheogobind Ram v. Mt. Kishunbansi Kuer.
 - (1933) A I R 1933 Pat 653 (662) 13 Pat 86 147 Ind Cas 101, Mrs. Lall v. Bajkishore Naram Singh.
 - (1916) A 1 R 1916 Mad 728 (730) 39 Mad 923 30 Ind Cas 707, Faradaraja Mudai v. Murugesan Pillai.
 - (1922) A I R 1922 Pat 507 (598) . 1 Pat 609 . 69 Ind Cas 668, Gobardhan Das 7. Salish Chandra.
 - (1926) A I R 1926 Pat 160 (162) 90 Ind Can 647, Jogendra Prasad Narayan Sunha y Manual Prasad Sahu
 - Sinha v. Mangal Prasad Sahu. (1892) 1802 All W N 71 (72), Fast ullah Khan v. Amm-ud-din Khan
 - (1910) 8 Ind Cas 877 (378) * 13 Oudh Cas 303, Mohammad Abdul Karım Khan v. Nawaz Singh.
 - [1929] A I R 1929 All 795 (797) 118 Ind Cas 237, Mot. Lal v. Champa Lal.
 (1905) 1905 Pun L R No 57 1905 Pun Re No 22 1905 Pun W R No. 33,
 Muhammad Nauar Khan v Eam Das.
 - (1897) 11 C P L R 157 (160), Mukund Ram Sukal v Harnaram,
 - (1694) 1894 All W N 96 (96), Parmeshrs Das v. Bass Nath.
 - (1918) A I R 1918 Mad 880 (594) 40 Mad 1069 42 Ind Cas 294 (F B), Pierce Leslie & Co Ltd v Perumal
 - (1919) A I R 1919 Oudh 370 (371) 51 1nd Cas 549 . 22 Oudh Cas 32, Gaya Praud v Gur Dayal.
 - (1876) 1876 Pun Be No. 89, Sulekh Chand v. Adjudhia Pershad.
 - (1914) A I R 1914 All 296 (297). 25 Ind Cas 738, Maharaja of Jaspur v. Lalja Sahas.
 - (1927) A 1 R-1927 Pat 218 (219) 103 Ind Cas 39 . 6 Pat 277, Biswambar Nath v Mahesh Sahi.
 - (1918) A I R 1918 Pat 457 (457) . 45 Ind Cas 203, Khoda Buhsh v. Bahadur
 - (1925) A I R 1925 Pat 474 (476) 87 Ind Cas 531: 5 Pat 1 (F B), Adaya Prasad Singh v Ram Narayan Daz
 - (1916) A 1 R 1916 Pat 205 (206) 36 Ind Cas 999, Ram Kumar Lal v. Kesheo Prasad Singh.
 - (1928) A I R 1928 Cal 241 (242), Sultan Hazan v Nanks Bibs.
 - (1905) 27 All 575 (576) 1905 AR W N 108 2 AU L Jour 287, Ahsan-ul-lah v Dakkini Din
 - (1925) A I R 1925 Lah 233 (235) 78 Ind Cas 241, Firm Sheru Mal China Mal v Firm Hira Lal Anant Ram.
 - (1894) 9 C P L R 15 (16), Ras Bahadur Mulund Balkrıshıa Buty v Lahya Mahar (1919) A I R 1919 Low Bur 132 (182) 52 Ind Cas 931, Isahut v, Ms Hia
 - Mo We.
 See also the Authors' Civil Procedure Code, Order 21 Rule 22 Note 13.

Lim. 163

Article 182 (Clause 7) Notes 132-133 Article 182 (Clause 7) Notes 133-134 order directs to be made on a certain date, the period of limitation under this Article will hegin to run from such date. Hence, where different dates are provided in the decree, for the payment of different portions of the decretal amount, there will he a distinct and separate starting point of limitation in regard to each of such portions of the decretal amount, so that in such cases there will be different starting points of limitation in regard to the same decree. In this respect, this clause differs from the other clauses of the Article under all of which limitation runs in respect of the decree as a whole and not in regard to particular portions of it alone at a time.¹

This clause applies only to the first application for the recovery of a payment due under a decree. A subsequent application in respect of the same payment will come under clause 5, supra.

The Act of 1859 did not contain any provision analogous to this clause. Still, it was held under that Act that limitation for the execution of an instalment decree ran in respect of each instalment from the date on which such instalment fell due.³

134. "Payment which the decree or order directs to be made at a certain date."—A decree directing maintenance to be paid annually on a certain date is an instance of a decree directing payment to be made on a certain date within the meaning of clause 7.1

A decree provided that a aum of Rs. 1650 should be paid to the plantiff at the end of five years from the decree. It was further provided that in lieu of the interest on Rs. 1200 out of this sum, the plaintiff should be in possession of a certain house belonging to the defendant and that the detendant should pay annually to the plaintiff the interest on the remaining Rs. 450 at a certain rats. The decree also contained a provision that if the defendant failed to pay the interest as provided, the plaintiff might execute the decree in respect of the Rs. 450 and the interest due thereon. It was held

Note 133

- 1. (1911) 10 Ind Cas 552 (554): 36 Mad 104, Vaidianatha Iyer v. Subramania Pattar.
- (1938) A I R 1938 All 210 (211): I L. R (1938) All 342: 175 Ind Cas 196, Lata (at Als Ehon v. Kalyan Mal.
- 3. (1867) Agra F B 83 (85), Ultaf Ali Ehan v. Ram Lal.
 - (1869) 6 Bom H O R 45 [48], Ultam Ram Manik Ram v. Girdhardal Motivam.
 - (1865) 1685 Bom P J 22, Ramapa v. Krishnaya.
 - (1671) 15 Suth W R 547 (547), Ram Sudoy Ghoss v. Raj Bullubh Saha.
 - (1875) 23 Suth W R 41 (41), Tincowree Dosses v. Umbika Chunder Roy Chowdhry.
 - (1870) 1870 Pun Ho No. 52, Chundoo Lall v. Mt. Surfeas Mehal Eegam. [But see (1869) 4 Mad H C R 275 (276), Lahshma Ammal v. Seshadri Iyengar.

Article 182

Note 18a

(Clause 7)

by the Punjab Chief Court that the provision enabling the decreeholder to realize a portion of the amount decreed on failure by the judgment-debtor to pay the stipulated interest on that portion at the stipulated time, did not amount to a direction in the decree within the meaning of the clause that the said portion was to be paid on the failure to nay interest.²

A decree provided that if the decretal amount was paid on a certain date, no interest would be payable, that if the decretal amount was paid on a certain other date, interest at a certain rate would be payable and that if the sum was paid on a still other date which was mentioned, interest at a certain other rate would be payable. It was held that the terms of the decree regulating the rate of interest payable thereunder with reference to certain dates could not be deemed to be a direction by the Court for payment on specified dates.³

An order subsequent to a decree postponing the date on which payment under the decree should be made or providing for the navment of the decretal amount by instalments, must be held to modify the decree, and an application for the enforcement of payment in accordance with such order will be an application for the enforce. ment of payment which the decree directs to be made at a certain date.4 But, where subsequent to the decree the parties presented a petition to the Court stating that they had entered into a compromise under which the decretal amount was to be paid in certain instal. mente and the Court directed the petition to be filed, it was held that the order did not amount to one directing the decretal amount to be paid by instalmente. In the undermentioned case it was held that an order etaying execution of a decree till the disposal of a suit hetween the came parties pending in the same Court, cannot be treated as having the effect of varying the decree so as to make it one directing the payment of the decretal amount at a certain date.

A decree directing a certain sum to be paid at n certain date and providing that in default certain properties which were in the possession of the defendant must be made over to the plaintiff, will come within this clause.

But, it has been held that a decree on a mortgage directing the sale of the mortgaged properties in default of payment of the mortgage money on or hefore a certain date, is not a decree directing any payment to be made at a certain date.

Ind

Ran

. .

Article 182 (Clause 7) Note 135

135. "Certain date." - These words refer to a date which, at the date of the decree or order, is certain. A date which can become certaio only at a inture time will not be a "certain" date within the meaning of clanse 7. Thus, where a mortgage decree provides that if on the sals of the mortgaged properties the sale proceeds are not sufficient to cover the decretal sum, the balance should be realized from the person of the indement debtor and from his other proporties, the decree cannot be regarded as directing such balance to be paid at a "certain" date. Similarly, where a decree provides for the payment of the decretal amount by certain instalments but contains a clause that if default be made in regard to one or more instalments the entire amount remaining due under the decree should become immediately navable, the provision as to the payment of the entire decretal sum on default in the payment of instalments cannot be treated as a direction for the payment of such sum at a "certain" date. (See Note 136 infra.)

The undermentioned decision,2 which is inconsistent with the above principle, is, it is submitted, not correct.

In Joti Prasad v. Srichand, Sulaiman, Ag. C. J., observed as follows:

"The corresponding clauss in the Act of 1871 contained the expression 'specified dato'. That necessarily connoted the idea that the exact date should be mentioned in the decree. The substitution of the word "certain" in place of "specified" widers the scope of its meaning. It is no longer necessary to meaning by the year, month and day the exact date in the decree. All the same the date fixed for payment must be a certain date. In my opinion, the word "certain" is used in contradistraction to "uncertain." It is not used in the sense in which ace might say that a certain man came to see me. It obviously means a date, which, though not expressly mentioned or ascertained, must certainly cour. This word "certain," in my opinion, is a contrast of the word "uncertain" as that word is used, for instacce, io Sections 32 and 33, Contract Act, or Sections 21 and 23, Transfer of Property Act.

"In the present case (which was a case of an instalment decree with a default clause providing that on two consecutive defaults being made the whole amount must become payable at the time when the decree was passed, it could not be known definitely and it was not at all certain whether two consecutive defaults would be made by 1921. If the judgment debtors went on paying the instalments regularly, there would nover he any

Note 135

I. (1917) A I R 1917 P C 85 (85): 45 Ind Cas 486, Khulna Loan Co Ltd. v. Janendra Nath. (Affirming A I R 1915 Cal 8)

⁽¹⁹¹⁵⁾ A I R 1915 Cal 8 (8): 24 Ind Cas 25, Janendra Nath Boss v. Khulna Loan Co. Ltd.

^{2. (1933)} A I R 1938 Lah 590 (592), Nanu Mal v. Amar Nath. S. (1928) A I R 1928 All 629 (631) : 112 Ind Cas 73 : 51 All 237 (F D).

default. It is therefore impossible, up my opinion, to say that the decree had fixed a 'certain' date for the payment of the whole amount in a lump snm. Such a date was not at all certain. It was dependent on the contingency of two consecutive defaults happening. The date might or might not come at all. No doubt it is now known that the defaults were made and a date arrived when the default clause could be enforced. but this was not certain when the decree was passed."

But, as pointed out in the above passage, the decree need not expressly specify the exact date by the year, month and day, The date may be indicated in any way by the decree.4 Thus, a decree directing the payment of money on the plaintiff attaining his majority will come under this clause. Similarly, it has been held that a decree directing a certain sum to be paid to the plaintiff augually or monthly, without specifying the exact date, will be governed by this clause.6 It has been held that in such cases the decree must be deemed to direct the navment to be made on the day year or the day month (as the case may be) from the date of the decree and thenceforward on the corresponding date year after vesr or month after month ea

A simple decree for money which does not fix, expressly or impliedly, any date for the payment of the money will not come within this clause, although in such cases the money is payable immediately on the decree being passed.7

4. (1890) 14 Mad 396 (398), Katers v. Venlamma,

5. (1936) A IR 1936 P C 309 (311) 164 Ind Cas 337 63 Ind App 429 (P C), Murugesam Pillas v Minalishisundara Ammal. (Confirming A I R 1935 Mad 107.)

6. (1887) 12 Bem 65 (68), Lakshmibas Bapun v Madhara Rav Bapun. (1896) 1896 Bom P J 493, Dhondo v. Chunto. (A decree for one half share in

a Varsashan must be construed as a decree ordering payment to be made annually)

(1906) 30 Mad 504 (505) 17 Mad L Jour 402, Astamma v. Narayana Bhatta. (A decree directing the defendants to pay plaintiff's main-tenance at a certain rate per annum or mensem from the date of the plaint is a decree for payment on the corresponding date or month every year }

(1890) 14 Mad 396 (398), Katers v. Venhamma, (Do)

(1892) 1892 Pun Re No 13 (F B), Nawabzada Muhammad Kamaruddun Khan v Piari Lal.

[See (1870) 1876 Bom P J 277, Malhar Rayaram v Ahmed Saheb, (Decree for rayment of annuity—Clause in Art 167 of the Act of 1871 was held to apply-it is treated as a decree directing the payment of an instalment at a specified date)]

(But see (1884) 7 Mad 83 (84), Yusuf v Sardar (Following 7 Mad 80 11

6a (1888) 12 Bom 65 (67], Lalshmibhas Bapup v. Madhatrav Bapup

> out altering the effect, so that such payment is one to be made at a certam date []

7. (1928) A 1 R 1928 All 629 (636) 112 Ind Cas 73 . 51 All 237 (F B), Jots Prasad v. Srichand. (Pet Mukern J.)

Article 153 (Cisase 7) Notes 135-135

In the undermentioned case? in was held that a degree director the payment of money "within" a certain reside will be once within this clause. It is submitted that the oppositions of this view is open to question, inserinch as in such cases the decree may be desired to direct the navment to be made on the last day of the Terret.

Ser also the unitermentioned decision.

13S. Instalment decree.—Where the decreal amount is directed te be paid in certain instalments at certain dates, an application in the enforcement of the payment of any of the insulments will be governed by this clause as being an application for the enforcement of a payment which the decree directs to be pall at a comin data Hance, each instalment is recoverable indep this clause by an application made within three years of the date on which such metalment falls due under the decree. The ther that the appliance n made after three years from the date on which earlier instalments tell due will not ber the application.

The above principle applies also to cases in which the instalment decree provides that on default being made in regard to one or more instalments, the entre amount under the decree should become payable. Hence, even in such cases an application for the enforcement of the payment of each instalment will be greated by this clause and time in respect of each instalment will tim from the date on which such instalment falls due."

But, where the application is not for the enforcement of the payment of any ractal ment under the decree but for the enforcement of the default chance which makes the entire amount under the decree payable immediately without reference to the imminents,

5. (1895) 1895 AI W N 198 (190", India Franci v. Sher Salar

A. (1899) 23 Fem. 522 (534). 1 Fem. L. S. St., Martin v., Arabina. (When a decree diverse payment to be made within a month or at a large in sometimed house appears memperature and gives our part time at friends mg brackstra in debath of partient, a most be taken as creating from its date and to be enformable only within three years from that time thies kept afre by applications for execution made sources to law within the presembed periods.)

New 135

L (1891) 1891 AT W N 171 (1711) Chain Gor v. Cluta Frain. (1971) UT Int Cas 201 (202 (Lat.), Gya Dra Cruita San v. Bran Dra

Sn Insian Cas 1305, 1305 Pm L E No. 57 1305 Pm Be No. 22 ; 1305 Pm W E No. 37.

Madamenta Frenz Abres. Ann Day

1902) 1903 Pan L B No. 45, Rays Jam v. Eurgopal Sanch.

1900) 1900 Pan L E + 423 1300 Fan In No. 44, Ann hays Ini +, Fasta Percal Culture v. Markets Proposition of the Local Course of the Course of the Course v. Markets Proposition of the Course v. Markets Proposition of the Course v. Markets Proposition of the Course v. Markets Proposition of the Course v. Markets Proposition of the Course v. Markets Proposition of the Course v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets v. Markets

5. 1315, VIB 7352 VILLER, 428' 641' 424) : 21 VI 341 544 : 777 [PP] CP8 42 (E. 1) Fits Frincist Sin Chinal LTS A I B LUTS AI 213 (BIX) STS End Cas LDS : I L B (BITS AI 542

Lata 'at Ali Kian v. Kai 120 Mal.

Limit A. I.S. 125 Cells 473 (FF) 236 Ind Cas Fré . 11 Earl FF / F F. dynina Frynsk v. Earls East

the application will not come under this clause.3 The reason is that in such a case the amount, the payment of which is sought to be enforced, is not directed by the decree to be paid at a certain date. Such amount becoming due under the decree only on the default being made, the question whether it will become due or when it will become due cannot, at the date of the decree, he capable of a certain answer. The view taken in some decisions that this clause applies even to an application for the enforcement of the default clause in such cases is, it is submitted, not correct.4 On the principles discussed in Note 26 ante, clause 1 also will not apply to such an application and it will therefore come under Article 181.6

The question has arisen as to when limitation begins to run for such an application. The general trend of decisions is to the effect that time begins to run from the earliest default, unless the decreeholder has waived the henefit of the provision with reference to such default, in which case time will begin to run from the next default with reference to which there is no such waiver.7 The correctness of this view is, however, thrown into doubt, by the decision of the Privy Council in Maung Sin v. Ma Tok,5

- 8. (1928) A I R 1928 All 629 (634, 636) . 51 All 237 : 112 Ind Cas 73 (F B), Jots Prasad v. Srs Chand.
- 4. (1916) A I R 1916 All 239 (240): 38 All 204 82 Ind Cas 590. Chattar Sinoh v. Amir Singh. (Confirming in Letters Patent Appeal: AIR 1915 All 311.)
- 5. (1928) A I R 1928 All 629 (635): 51 All 237 . 112 Ind Cas 78 (F B), Jots Prasad v. Srs Chand.
- 6. (1935) A I R 1935 All 259 (261) : 157 Ind Cas 1052, Hars Ram v. Heman
 - (1934) A I R 1934 All 534 (538) 149 Ind Cas 598, 56 All 921, Ram Prasad v. Jadhunandan Upadhia.
 - (1916) A I R 1916 All 299 (240) 38 All 204 . 32 Ind Cas 590, Chatter Singh v. Amir Singh (Confirming in Letters Patent Appeal in A I R 1915
- (1877) 2 Bom 356 (300), Dulsook Rattanchand v. Chugon Narrun, 1 . -(1881) 7 Cal 56 (60): 5 Ind Jur 525, Asmutullah Dalal v. Kally Churn Matter.
 - (1918) A 1 R 1918 Sand 68 (69) : 11 Sand L R 120 45 Ind Cas 324. Farm of Bhawandas Fercomal v. Meghras. (But see (1934) A I R 1934 Oudh 334 (336) 149 Ind Cas 603 · 9 Lnck 602. Lal Bahudur v. Mathura Prasad 1
- 7, See (1925) A I R 1925 Cal 1012 (1015) 86 Ind Cas 1051 54 Cal 143, Jahm Chand v. Yusufals Choudhury.
- (1903) 27 Bom 1 (10, 12, 13) 4 Bom L R 688 (P B), Kashiram v. P andu (1920) A I R 1920 Bem 71 (73) 44 Bem 840 58 Ind Cas 65, Ampt K han derao Rango v. Govind Ramachandra.
 - (1883) 5 All 289 (292, 293) 1883 All W N 33, Radha Prasad Singh v. Bhagwan Ras
 - (1889) 11 All 482 (485) 1889 All W N 186, Buddhu Lal v. Rahlhab Das. (1926) A I R 1926 Cal 212 (213) 85 Ind Cas 784, Kalicharan Rov v. Mohesh Chandra Ghosh.
 - (1920) A I R 1920 Sind 25 (26) 59 Ind Cas 607 14 Sind L R 128. Bahadur Dino v Galomal
 - (1869) 11 Suth W R 570 (571) 2 Beng L R A C 345, Upendra Mohan Tagore v Takalia Bepara.
- 8. (1927) A I R 1927 P G 146 (147) 101 Ind Cas 736.5 Rang 422.54 Ind App 272 (P C).

Article 182 (Clause 7) Notes 135-136 In the undermentioned case⁸ it was held that a decree directing the payment of money "within" a certain period will not come within this clause. It is enhmitted that the correctnoss of this view is open to question, inasmuch as in such cases the decree may be deemed to direct the payment to be made on the last day of the period.

See also the undermentioned decision.9

136. Instalment decree.—Where the decretal amount is directed to be paid in certain instalments at certain dates, an application for the enforcement of the payment of any of the instalments will be governed by this clause as being an application for the enforcement of a payment which the decree directs to be paid at a certain date. Hence, each instalment is recoverable under this clause by an application made within three years of the date on which such instalment falls due under the decree. The fact that the application is made after three years from the date on which earlier instalments fell due will not bar the application.

The above principle applies also to cases in which the instalment decree provides that on default being made in regard to one or mor instalments, the entire amount under the decree should become payable. Hence, even in such cases an application for the enforcement of the payment of each instalment will be governed by this clause and time in respect of each instalment will run from the date on which such instalment falls due ²

But, where the application is not for the enforcement of the payment of any instalment under the decree but for the enforcement of the default clause which makes the entire amount under the decree payable immediately without reference to the instalments.

8. (1885) 1885 All W N 193 (193), Lalia Prasad v. Sheo Sahan

9. (1890) 23 Bom 592 (594). 1 Bom L R 31, Marsti v. Krishna. (Where a decree directs payment to be made within a month or at a min succeeding pears without mentioning any limit for that time or directioning forcedosize in default of payment, it must be taken as from that firm to distance the default of payment, it must be taken as most from that time onless kept alive by applications for execution made according to law within the prescribed pariods.

Nate 136

(1881) 1881 All W N 171 (171), Chedu Gir v. Chotu Panda.
 (1931) 187 Ind Cas 292 (292) (Isah), Gopi Ram Jaithu Ram v. Ramji Dis

(1905) 1905 Pun L R No. 57 · 1905 Pun Re No. 22 : 1905 Pun W R No 33, Muhammad Nawas Khan v. Ram Das.

Lal v. Fatis

Prasad Khanna v. Mathura Prasad.

Latafat Al: Khan v. Kalyan Mal. (1935) A I R 1935 Oudh 465 (167) : 156 Ind Cas 764 : 11 Luck 276 (F B). A 16th of Prand v. Bans Lel. the application will not come under this clause.3 The reason is that in such a case the amount, the payment of which is sought to be enforced, is not directed by the decree to be paid at a certain date. Such amount becoming due under the decree ouly on the default being made, the question whether it will become due or when it will become due cannot, at the date of the decree, he capable of a cortain answer. The view taken in some decisions that this clause applies even to an application for the enforcement of the default clause in such cases is, it is submitted, not correct. On the principles discussed in Note 26 ante, clause I also will not apply to such an application and it will therefore come under Article 181.6

The question has arisen as to when limitation begins to run for such an application. The general trend of decisions is to the effect that time begins to run from the earliest default, unless the decree. holder has warred the benefit of the provision with reference to such default, in which case time will begin to run from the next default with reference to which there is no such waiver." The correctness of this view is, however, thrown into doubt, by the decision of the Privy Council in Maung Sin v. Ma Tok.9

- 3. (1929) A I R 1929 All 629 (634, 636) , 51 All 237 , 112 Ind Cas 73 (F B), Jots Prasad v. Srs Chand.
- 4. (1916) A I R 1916 All 239 (240) : 38 All 204 32 Ind Cas 500. Chattar Singh v. Amir Singh. (Confirming in Letters Patent Appeal . AIR 1915 All 311.)
- 5. (1928) A I R 1928 All 629 (635): 51 All 287: 112 Ind Cas 78 (F B), Josi Prasad v. Sra Chand,
- 6. (1935) A I R 1935 All 259 (261) . 157 Ind Cas 1052, Hart Ram v. Himan Lal.
 - (1934) A I R 1934 All 534 (588) 149 Ind Cas 598, 56 All 921, Ram Prasad v Jadhunandan Upadhia.
 - (1916) A I R 1916 Ali 239 (240) . 38 All 204 : 32 Ind Cas 500, Chatter Smoh v. Amir Singh (Confirming in Letters Patent Appeal in A I R 1915
- ! (1877) 2 Bom 356 (360), Dulsook Rattanchand v. Chugon Narrun. 1 -(1881) 7 Cal 50 (60) . 5 Ind Jur 525, Asmutullah Dalal v. Kally Churn Matter. (1918) A I R 1918 Sind 68 (69) 11 Sind L R 120 · 45 Ind Cas 324. Firm of
 - Bhawandas Feroomal v Meghras. (But see (1934) A I R 1934 Ondh 334 (336) : 149 Ind Cas 603 9 Luck
 - 602, Lal Bahudur v Mathura Prasad]
- 7. See (1925) A I R 1925 Cal 1012 (1015) 66 Ind Cas 1051 54 Cal 148, Jahr Chand v. Yusufals Choudhury
- (1903) 27 Bom 1 (10, 12, 13) 4 Bom L R 688 (F B), Kashiram v. P andu (1920) A 1 B 1920 Bom 71 (73) 44 Bom 840 58 Ind Cas 65, Amrif R han derao Kango v. Govind Ramachandra.
 - (1883) 5 All 289 (292, 293) 1883 All W N 83, Radha Prasad Sungh v. Bhagwan Ras.
- (1689) 11 All 482 (485) 1889 All W N 186, Buddhu Lal v. Rahlhab Das. (1926) A I R 1926 Cal 212 (213) 85 Ind Cas 784, Kalicharan Roy v. Mohesh Chandra Ghosh
- (1920) A I R 1920 Sind 25 (26) 59 Ind Cas 607 14 Sind L R 128, Bahadur Dino v Galomal.
- (1869) 11 Suth W R 570 (571) 2 Peng L R A O 315, Upendra Mohan Tagore v. Takalsa Bepars.
- 8. (1927) A I R 1927 P C 146 (147) 101 Ind Cas 736 5 Rang 422 . 54 Ind App 272 (P C).

Article 182 (Clause 7) Note 136 In that case, a decree was passed for the payment of money in certain instalments. It was provided in the decree that on default the payment of any instalment the decree-holder would be entitled to take possession of certain properties. It was held by the Privy Council that the default of the judgment-debtor in regard to each instalment would entitle the decree-holder to apply for possession under the decree and an application for possession within three years of the date on which any of the instalments fell due would be in time although it may be made more than three years from the date of the earliest default.

But, assuming that an application for the enforcement of the default clause must be made within three years from the earliest default, the question arises whether the fact that such application is harred by limitation necessarily involves the consequence that an application for the enforcement of the payment of the instalments that have fallen due will also be barred. In other words, suppose an application for the enforcement of certain instalments which fell due within three years of the application is made after three years from the earliest default. Will such an application be barred merely because an application for the enforcement of the default clause claiming the entire decretal amount without regard to the instalments would have been harred? On this question there is a conflict of decisions

The following three views have been expressed on the question-

1. The application for the enforcement of the payment of the instalments which fell due within three years of the application will not be harred though the application for the enforcement of the default clause may be harred. This view proceeds on the ground that the clause entitling the decree-holder to execute for the whole amount is only intended for the henefit of the decree-holder and therefore his failure to avail himself of that benefit cannot deprive him of his right to the payment of the instalments under the decree.

^{9. (1928)} A I R 1928 AH 629 (640): 51 AH 237: 112 Ind Cas 73 (F B), Jois Prasad v. Srichand.

⁽¹⁹³⁵⁾ A I R 1935 All 259 (261): 157 Ind Cas 1052, Hari Ram v. Himman Lal.

⁽¹⁹³⁴⁾ A I R 1934 All 534 (538): 149 Ind Cas 598: 55 All 921, Ram Prasad Ram v. Jadunandan Upadhia.

^{(1879) 2} All 291 (293), Kanchan Singh v. Sheo Prasad.

⁽¹⁹³⁶⁾ A I R 1936 Born 268 (270): 163 Ind Cas 937, Bomaiu Bhadu Ghatole v. Govardhandas Nanabhai.

 ^{(1936]} A.I. K. 1936 Bom 17 (19): 60 Bom 62: 160 Ind Cas 527, Veherbhas Vallatbhas v. Jater Soma. (Dissenting from A. I. R. 1918 Bom 163.)
 (1887) 14 Cal 352 (354, 355), Ram Culpo Bhaltacharsi v. Ram Chunder

^{(1883) 9} Cal 857 (860), Nelmadhubi Chalerbuity v. Ram Sadoy Chosh.

^{(1883) 13} Cal L R 213 (246), Chunder Komal Dass v. Bissasurree Dassia. (1970) 14 Sath W R 414 (415) 6 Beng L R App 31, Krishna Chandra

Shaha v. Omed Ali. (1869) 12 Suth W R 71 (72). 3 Beng LR App 112, Mt. Khedu v. Kalu Sahu.

^{(1928) 109} Ind Cas 272 (272) (Lah), Raja v. Hazari.

- 2. An application for the execution of the decree made after three years from the date of the earliest default will be barred not only with reference to the default clause making the whole amount payable but also with reference to the anstalments, so that even the instalments which fell due within three years of the application cannot be recovered 10 This view proceeds on the ground that in such cases, on default occurring, the decree ceases to be an instalment decree.
- 3. The question whether the application for the enforcement of the payment of instalments due under a decree will be barred even with reference to the instalments which fell due within three years of the application, depends on the terms of the default clause.11 If the clause leaves it to the option of the decree-holder to execute for the whole amount on default taking place, his application for the instalments will not be barred although made more than three years after the first default. But, if the clause makes it obligatory on the decree-holder to execute for the whole amount on default taking place, then his application for execution made more than three years from the
 - (1912) 16 Ind Cas 842 (842, 843) 1913 Pun Re No. 6, Keshen Chand v. Bhai
 - Gopal Singh. (1902) 1902 Pun Re No. 100 . 1902 Pun LR No. 131, Allah Bakhsh v. Bha-
 - (1881) 8 Mad 256 (258) . 6 Ind Jut 190, Appaula v. Papaula.
- (1935) A I R 1935 Oudh 465 (467) . 156 Ind Cas 764 . 11 Luck 278 (F B), Ajodhia Prasad v. Banss Lal.
- (1933) A I R 1933 Pesh 14 (15, 16) 141 Ind Cas 745, Mt Koran v. Bhan Nanal Singh.
- (1989) A I R 1939 Sind 49 (51), Lekhras Sirumal v Khubchand,
- (1890) 12 All 369 (571) 1890 All W N 19, Muthu Lal v Khairati Lal.
 (1885) 7 All 327 (330) 1885 All W N 26, Zahur Khan v Bakhtawar.
 - (1879) 2 All 443 (444) 4 Ind Jur 580, Shib Dat v. Kalka Prasad.
 - (1923) A 1 R 1923 Bom 207 (208) 72 Ind Cas 275, Hansray Godhan v. Banu.
 - (1918) A I R 1918 Born 163 (164) 42 Born 723 47 Ind Cas 313, Rauchand Motichand Gujar v. Dhondo Lazuman Baure.
 - (1894) 1894 Bom P J 407, Hatt Detchand v. Naron.
 - (1926) A I R 1926 Cal 212 (212, 213) 85 Ind Cas 784, Kalicharan v. Mohesh Chandra
 - (1918) A I R 1918 Cal 245 (246] 37 Ind Cas 916, Joyanuddin Khan v. Jamuruddin Sarkar
 - (1901-02) 6 Cal W N 348 (850), Bholanand Jha v. Padmanund Singh. (1904) 31 Cal 297 (299, 300), Jadab Chandra Dakshi v. Bhairab Chandra Chukerbutty

Debce.

11. (1917) A I R 1917 All 351 (352) 39 Ind Cas 634 39 All 230, Lachma

Monee

- Naram v. Sarju Parshad. (1894) 16 All S71 (374) 1894 All W N 115, Shankar Prasad v. Jalva
 - Prasad. (1883) 5 All 201 (206) 1882 All W N 221, Janks Prasad v. Ghulam Als. (1919) A I R 1919 Cal 322 (323) : 49 Ind Cus 497, Bama Sundara Dasya v. Kıran Chandra.

earliest default will be harred not only with regard to the default clause but also with reference to the instalments, so that even his right to recover the instalments which fell due within three years of the application will be harred.

An analysis of the decisions cited in Foot-Notes 9 to 11 above will show that the general trend of opinion of all the High Courts except those of Calcutta and Patna is in favour of the first view, that the general trend of decisions of the High Court of Calcutta is in favour of the second view and that the third view has been adopted by the Patna High Court and in certain decisions of other High Courts.

Where an instalment decree with a default clause making the whole amount payable on one or more defaults has been passed and the decree-holder, on a default taking place, elects to enforce the default clause by applying for execution in respect of the whole amount without regard to the instalments, his subsequent application for execution must be treated only as an application in respect of the whole decree and not as one in respect of the instalments under the decree. Hence, where such an application is made more than three years from the final order on the previous application, it will be harred oven with regard to the instalments falling due under the decree within three years of the application.¹² If the application is made within three years of the final order on the prior application, it will be within time under clause 5 of this Article.

Where a decree provides for payment by instalments and contains a dease that if default is made in regard to one or more instalments the decree-holder chould be entitled to the possession of certain lands, an application for the enforcement of the payment of any of the instalments will come within this clause, and the decree-holder will be entitled to recover such instalments as fell due within three years of the application although such application has been made more than three years after the earliest default. Been with regard to an application for possession to which the decree-holder hecomes entitled on default, it has already been seen that under the Privy Council decision in Maung Sin v. Ma Tok, 12 limitation for such application will run from each default and not from the earliest application will run from each default and not from the earliest

^{(1886) 13} Cal 73 (75), Judhaster Patro v. Nobin Chandra Khela.

^{(1934) 6} Ind Rul Oudh 592 (594), Lal Bahadur v. Mathura Prasad.

⁽¹⁹³²⁾ A I H 1932 Pat 253 (255): 11 Pat 440: 139 Ind Cas 203, Braham Kishun Narain Deo v. Harshar Munder.

⁽¹⁹¹⁸⁾ A I R. 1918 Pat 95 (97): 48 Ind Cas 728: 4 Pat L. Jour 865, Manindra Nath Roy v. Kanhai Ram Maywart.

 ^{(1907) 1} Sind L R 252 (254), Jethanand Topandas v. Lalamal Sitalmal.
 (1931) A I R 1931 Born 263 (263, 264): 132 Ind Cas 487, Pandurang v. Mahadev.

^{(1905) 23} All 219 (251) ; 2 All L Jour 628 ; 1905 All W N 268, Bhagican Das v. Janki.

^{18. (1927)} A I R 1927 P G 146 (147) ; 101 Ind Cas 786 ; 54 Ind App 272 ; 5
Rang 422 (P C), Maung Sur v. Ma Tol.

^{14 (1927]} A I R 1927 P C 146 (147): 101 Ind Cas 736: 54 Ind App 272: 5 Rans 422 (P C).

default. The undermentioned decisions, 15 which have taken a contrary view, must be beld to be not good law.

EXPLANATION I.

437. Decree in favour of several persons. — A decree in favour of several persons may be passed either jointly or severally, distinguishing portions of the sabject-matter as delivorable or payable to each. In the former case, an application for execution, in favour of the decree-holders will save limitation for execution, in favour of all the joint decree-holders. In the latter case, an application for execution by one of the decree-holders will save limitation only in favour of the applicant and not in favour of any other decree-holder.

In the case of a joint decree, an application for execution by a representative of one of the joint decree-holders will also save limitation in favour of all the decree-holders.

There is a conflict of decisions as to whether a joint decree holder can apply for execution in respect of what he conceives to be his own stare of the decree ² But, it is held that each an application is in accordance with law, it will save limitation not only in favour of the particular decree-holder who applies for execution but also in favour of the other decree-holders.

A decree under which the plaintiff is entitled to recover a certain sum from the defendant and the lattor is entitled to obtain possession from the plaintiff, is a decree passed severally in favour of more persons than one and an application for execution by the plaintiff or the defendant will not save limitation for execution by the other.

There was no provision corresponding to Explanation I in the Limitation Act of 1859 It was nevertheless held in decisions passed under that Act that an application for execution of a joint decree made by one of the decree-holders would save limitation in favour of all.

(1881) 4 All 83 (85). 1891 All W N 121, Ugrah Nath v. Lagan Mann.
 (1916) A I R 1916 Lab 66 (68) 96 Ind Cas 978 1917 Pun Re No. 8,

Mt Kirna Ders v. Dasaundha Ram.

Note 137

- (1899) 22 All 199 (204) 1900 All W N 8 (F B), Zamir Hasan v Sundar.
 (1910) 7 Ind Cas 939 (910) 34 Bom 672, Mulchand v. Keyari Ehupchand.
- See the Authors' Civil Procedure Code, Order 21 Rule 15 Note 11.
 (1928) A I R 1928 Cal 861 (862) 118 Ind Cas \$37, Kanak Proca Dev. v.
- Dhirendra Nath (See also (1871) 16 Suth W R 29 (30), Shib Chunder Doss v. Ram
 - Chunder Peddar]
 [But see (1934) A I E 1934 Pesh 40 (12) 152 Ind Cas 443, Ahmad
- Ali v Mt. Fatima Sultan ;
 4 (1897) 22 Bom 999 (1001), Jeddi Subraya v Ramrao Ram Chandra
- 5, (1869) 11 Suth W R 421 (421), Mt. Dhunessures v Goodkur Sahov
- (1869) 11 Suth W R 343 (344) 2 Beng L R App 47, Arisunnissa Khalun v. Shashibhusan Bose
 - (1867) 8 Suth W R 100 (101), Roy Presnath Chowdhry v Prannath Roy Chowdhry

Article 182 (Expln. I) Notes 136-137

Article 182 (Expln. I) Notes 137-188 See also the undermentioned decisions 6

138. Decree against several persons. - A decree may be passed against several persons, either mintly or severally, distinguishing portions of the subject-matter as deliverable or pavable by each. In the former caso, an application for execution against one of the judgment-debtors will save limitation as against all of them.1 In the latter case, an application for execution will save limitation only as against the particular judgment-debtor against whom it has been made and not against others.2

Where a decree is passed jointly against A and B, the fact that it is provided in the decree that it should be first executed against

- (1866) 6 Suth W R Misc 59 (59), Johnroonissa Khatoon v. Ameeroonissa Khatun.
- (1866) 6 Suth W R Misc 76 (77), Maharance Indurject Kunwur v. Mazum Alı Khan.
 - (1864) I Suth W R Mise 1 (2), Brojo Coomar Mullick v. Ram Bulsh Chateer see.
- (1870) 13 Suth W R 128 (128) : 4 Beng L R App 41, Andh Behars Lai v. Bro iomohun Lall.
- - the decree-holders could not benefit the other set of decree-holders ! (1889) 13 Mad 236 (239), Seshan v. Rajagopala. (A decree in a partition sult, in favour of two Hindu minor brothers and another brother acting as their next friend which declares the rights of the three brothers. to redeem a certain property is not a decree passed severally in favour of the plantiffs.)

Note 138

- 1. (1909) 2 Ind Cas 88 (88) (All), Lachminakuer v. Sampat Rai.
- (1907) 29 All 623 (626): 1907 All W N 204: 4 All L Jour 552. Gauri Sahai v. Ashfak Husam. (Decree for sale against all defendants-Decree against one set aside-Snit against that defendant subsequently decreed-Second order absolute. The two orders operate as one decree-Decree made absolute.)
 - (1926) A I B 1926 Cal 86 (87) . 88 Ind Cas 1039, Tara Prasanna v. Jnanendra Narayan.
- (1909) 4 1nd Cas 403 (409) (Cal), Barada Kinkarv. Nabin Chandra.
- (1931) A 1 B 1931 Lah 116 (117): 134 Ind Cas 194, Gopt Chand v. Meher Chand. (1916) A 1 R 1916 Mad 1 (2) : 30 Iud Cas 423 . 38 Mad 419, Abdul Khadir v-
- Ahammad Shawa Ravuther. (1910) 5 Ind Cas 800 (800) . 13 Oudh Cas 48, Kabilasi Kunwar v. Rudr
- Pratap Sahi.
- (1927) A 1 R 1927 Pat 416 (417): 103 1nd Cas 807, Ramasray Chaudhari v. Lachhun Narayan Oha. (Dereo joint and soveral—Application against one judgment debtor is step against all.) (See also (1866) 6 Suth W R Miso 25 (25), Shailh Bunecad Ali Y.
- Juggessur Singh. (Cases under Section 20 of Act XIV of 1859)] 2. (1918) A I R 1918 All 830 (330) : 46 Ind Cas 669 : 40 All 206, Ghulam Muhsudden Khan v. Dambar Singh.
 - (1926) A I R 1926 Cal 267 (270) : 85 Ind Cas 657, Birendra Chandra v. Tulss Charan. (Simply mentioning the name of the other judgmentdebtor will not make it one against both)
 - (1935) A 1 R 1935 Lah 919 (950) : 162 Iud Cas 208, Umrao Singh v. Hafu Muhammad Abdullah.
 - (1931) A. J. R. 1934 Lah 637 (639) : 153 Ind Cas 238, Hofu Mahomed Abdullah v. . 1mrao Singh.

A does not make it other than a joint decree against them both. Similarly, the fact that a joint decree differentiates between the several judgment-debtors as regards the mode of execution does not affect its character as a joint decree. So also, the fact that subsequent to the passing of a joint decree against several persons the liability of one of them is limited by an adjustment with the decree holder, does not alter the character of the decree as a joint decree. An application for execution against one of several joint judgment-debtors under a decree will save limitation for execution against the other judgment-debtors, although, as against the former the decree is subsequently set aside or declared moperative.

A decree passed against several persons as the legal representatives of a deceased person is passed against them jointly and severally and an application for execution made against one of the judgment-debtors will save limitation for execution against the others also.

A decree against the manager of a Hudu joint family carrying on husiness is a decree passed against several persons jointly within the meaning of Explanation I and an application for execution against any of the members of the family will save limitation for execution against other members also.⁸

In a suit for sale on a mortgage, it was found that one of the properties had heen previously sold for arrears of revenue. Hence, a decree was passed for the realization of the total amount due by the sale of the other properties and out of a certain amount of eash in the hands of one of the defendants which had been received by him as the surplus proceeds of the revenue sale. It was held that the decree was one passed jointly against all the defendants and that an application for execution by sale of the properties would save limitation for execution against the surplus sale proceeds of the revenue sale.

Where a mortgage decree does not apportion the mortgage debt as among the different items of property mortgaged, it is a joint

⁽¹⁹³⁵⁾ A I R 1935 Oudh 9 (11) 152 Ind Cas 457 . 10 Luck 250, Sahar Lat v Deputy Commissioner, Sitapur.

⁽See also (1873) 19 Suth W R 30 (32) 10 Beng L R 253 (F B), Wiss v. Raynaram Chucherbutty (Case before enactment of Explanation I 1

^{(1868) 10} Suth W R 10 (11) 10 Beng L R 259 (Note), Khemadebia v. Kumala Kant Bukshee (Do)]

^{3 (1937)} A I R 1937 Lah 792 (793), Murlimall & Sons v. Bhawani Dass.

 ⁽¹⁹²⁹⁾ A I R 1929 All 795 (196) 118 Ind Cas 237, Mot. Lal v. Champa Lal.
 (1921) A I R 1921 Sind 192 (194) 70 Ind Cas 477 16 Sind L R 215, Donald Graham & Co. v. Kewalram

^{6 (1909)} I Ind Cas 339 [340] 31 All 309, Lalta Prasad v Suraj Kunwar

^{7. (1934)} A I R 1934 Rang 101 (102] I49 Ind Can 98, U Nyo v. U Po Hlang.

^{8 (1922) 67} Ind Cas 56 (57] (Lah), Kular Nath v. Radha Kushen.

 ⁽¹⁹²⁴⁾ A I R 1924 Pat 700 (702, 703) 76 Ind Cas 452, Bishin Chand v. Abhorkumar Chand.

Article 182 (Expln. I) Notes 138-139 decree passed against the mortgagor and a subsequent mortgage of some of the items.¹⁰

An application for execution against one joint judgment debtor will save limitation not only against the other judgment debtors but also against the legal representatives of the other judgment debtors.¹¹

But an application for execution against a joint judgment-debtor will save limitation for execution gainst other joint judgment-debtors only where such application has been one in accordance with law and made to the proper Court. 12

It is an application for execution or to take a step-in-aid of execution against a joint judgment-debtor that will save limitation against the other judgment-debtors. The more fact that as against one joint judgment-debtor limitation is suspended in consequence of his adjudication as an insolvent, limitation will not be suspended in respect of the other yout udd ment-debtors also.¹³

Explanation I only provides that an application for execution or to take a step-in-aid of execution against one joint judgment-debtor will save limitation for execution against the other joint judgment-debtors. The Explanation has nothing to do with the question whether an order of revivor of a decree of the Original Side of a High Court passed against one joint judgment-debtor will be operative against other joint judgment-debtors also, ¹⁴

139. Judgment-debtor and his surety—Whether application for execution against one will save limitation against the other. Where a person, either before or after a decree is passed, stands surety for the eatisfaction of the decree by the judgment-debtor and the decree is executable against the eurety also under the provisions of Section 145 of the Civil Procedure Code, an application for execution against birn will be governed by this Article. The question, however, arises whether an application for execution either against the surety or the judgment-debtor alone will save limitation 10, (1903) 30 Cat Tet (160) 8 Cat W N 251, Troptokya Nath Bass v. Jyeli Pro-

kath Nardi. 11. (1927) A I R 1927 Mad 1103 (1104): 103 Ind Cas 391, Kotiyadu v. Subbayya. (1905) 2 Cal L Jour 644 (545), Jogendra Nath Roy v. Rank Chandra

Baner see. 12. (1899) 27 Cal 210 (213), Harendra Lai Roy v. Sham Lai Sen.

13. (1938) A I R 1939 Pat 395 (396): 176 Ind Cas 576, Ram Ram Bijoy Prassd v, Nageshaar Teway. 14. (1938) A I R 1938 May 518 (514): 40 Nad 1127: 40 Ind Cas 603, Erishnaiya

14. (1918) A I R 1918 Mad 518 (514): 40 Mad 1127: 40 Ind Cas 603, Krishnaiya v. Gajendra. Noto 189

 See also Note 13 to Section 145 of the Anthors' Commentary on the Code of Civil Procedure.
 A 1 R 1937 Cal 452 (454): 173 Ind Cas 183. Harendra Eumar v.

Gurupada Bhowmick. (1933) A I R 1933 Mad 219 (220) · 142 Ind Cas 363, Rami Reddi v. Gurumurth.

 A I R 1932 P O 181 (183): 136 Ind Cas 629 (P C), Raghunandan Prasad Singh v. Krityanand Singh Bahadur.
 (1933) A I R 1933 Lab 590 (592), Nanu Mal v. Amar Nath. against both of them. On this question there is a conflict of decisions. One view is that such application will save limitation only against the judgment-dehtor or the surety, as the case may be, and not against both of them.\(^1\) The view is based on the ground that in such cases the judgment-dehtor and the surety are not persons against whom the decree has been passed jointly within the meaning of the latter part of the 2nd paragraph of Explanation I. The other view is that in such cases the application for execution will save limitation against both the judgment-dehtor and his surety.\(^2\) According to the decisions which take this view, Explanation I does not apply at all to such cases. Hence, as an application for execution against either beindgment-dehtor or the surety alone will be one quite in accordance with law under clause 5, such application will save limitation against both It is submitted that the latter set of decisions is correct.

Where a decree has heen passed jointly against a judgment-debtor and his surety, the case will clearly come within the latter part of the 2nd paragraph of Explanation I and an application for execution against either of them will save limitation against both. In such cases, the mere fact that the decree provides that it should he executed against the surety if the amount was not realized from the principal debtor, does not make the decree other than a joint decree for the purpose of the Explanation.²

- 1, (1906) 81 Bom 50 (54): 8 Bom L R 807, Narayana v. Temmaya.
- (1926) A I R 1926 Cal 207 (269) . 85 Ind Cas 657, Birendra Chandra Singha
- v. Tuls: Charan. (1922) A I R 1922 Lab 203 (200) 60 Ind Cas 265, Wazir Bakih v Hars
- (1914) 1914 Mad W N 64 (64) (Jour), C. M S A, No. 62 of 1913.
- (1929) A I R 1929 Pat 507 (601) 120 Ind Cas 315, Kerlyanand v. Perthe-
- (1929) A I R 1929 Pat 595 (597) 120 Ind Cas 309 8 Pat 310, Raghunandan Prasad v. Kirtyanand.
- (1928) A I R 1928 Rang 292 (283) 111 Ind Cas 479 . 6 Rang 284, Mohamed Kassim v. Janila Bechee
- (1923) A I R 1923 Bom 366 (367, 368) 73 Ind Cas 233 47 Bom 778, Usuf Als v. Syed Amin
 - [See also (1898) 23 Bom 478 (483), Kuzaja v. Vinayak R. Parbhu.
 - and so, application for execution against him does not save limitation against the principal dobtor]
- (1935) A I R 1935 Mad 188 (189) 58 Mad 276: 155 Ind Cas 664, Gangaraju
 Nubbayya
 - (1921) A I R 1921 All 291 (293) 43 All 152 58 Ind Cas 794, Md. Hafis v. Md. Urahim. (1922) A I R 1922 All 481 (483) 44 All 743 77 Ind Cas 129, Badruddin v.
 - Md. Hafix (1937) A I R 1937 Oudh 351 (353) 168 Ind Cas 600 13 Luck 353, Bachchu
- Singh v. Radhe Lall.
 3. (1922) A IR 1922 Lab 457 (458) 67 Ind Cas 301, Honda Ram v. Firm Seth Kanwar Bhansukhand

Article 182 (Expln. I) Notes 139-140

Steps taken for the enforcement of a surety hond against a surety for a judgment-dehtor otherwise than by the execution of the decree against the surety under Section 145 of the Civil Procedure Code, will not save limitation for execution of the decree against the judgment-dehtor.4 The reason is that in such cases the steps taken for the enforcement of the surety bond will not come within the description of an application for execution or to take a step-in-aid of execution of the decree.

See also the undermentioned cases.⁵

140. Decree for partition .- With regard to decrees for partition passed before the coming into force of the Civil Procedure Code of 1908, which merely declared the respective rights of the parties leaving it to be determined in execution what properties were to be allotted to each, it has been held that such decrees were joint decrees for the purpose of the Explanation and that an application for execution by any one of the parties will save limitation in favour of all,1 The basis of these decisions is that such decrees contained a joint declaration of the rights of the parties. But this principle will not apply to a final decree for partition passed after the coming into force of the Civil Procedure Code of 1908, specifying the particular properties to be allotted to the different parties. Such a decree will clearly be a decree passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each. Hence, in such a case an application for execution made by one of the parties to the decree will not save limitation in favour of any other party.2 But where a decree, while awarding to

⁽¹⁹²⁰⁾ A I R 1920 Upp Bur 21 (23): 3 Upp Bur Rul 261: 60 Ind Cas 23, Yanke Supaya v. Maung Kan-

^{4. (1933)} A I R 1933 Mad 722 (724): 145 Ind Cas 1001, Jamunadas Raruji Sail v. Krishnan.

^{5. (1933)} A I R 1933 Oudh 209 (213): 8 Luck 427: 143 Ind Cas 808, Shyam Lal v. Nasiruddin Beg. (Article 182 does not apply at all to an application for execution of the decr guarantees payment of

is Article 181 and unde when the decree was kt . .

last application) (1866) 6 Suth W R Mise 44 (44), Hurkhoo Singh v. Baboo Ram Kishen. (Decision under Act of 1859—Execution against principal debtor will not keep alive decree against surety.)

Note 140 1 (1878) 8 Cal 551 (552) : 2 Cal L R 187, Sheikh Khoorshed Hossein v. Nubbee

Fatima. (1882) 9 Cal 568 (570), Mohun Chunder Kurmolar v. Mohesh Chunder

Kurmokar.

^{(1896) 1896} Born P J 271, Coverdandes v. Ghangshamdas.

^{(1886) 1886} Bom P J 287, Narayen v. Vithal. (1922) A I R 1922 Mad 327 (328) : 65 Ind Cas 990, Ramasami Iyengar v.

Narayana Ivengar. noc t'andera acr the

the different sharers their respective shares, declares certain proporty to be joint, it has been held that such a decree is soint and that an application for execution by one of the parties will save limitation in favour of all 3 The reason given is that a decree cannot be joint and several at the same time.

Article 182 (Expin. I) Notes 140-141

Where a decree consisted of two parts, one in favour of the plaintiffs against the defendant, entitling them to have their share in the property in the suit to be set apart, and the other, enabling them to have a partition enter se of such joint share on the younger of them coming of age, it was held that a joint application for the execution of the former part will not afford a fresh starting point for the period of limitation in respect to an application by one of the plaintiffs in execution of the latter part of the decree.4

- 141. Decree partly joint and partly several against several defendants, -A decree passed against several persons may be partly joint and partly several Thus, it may be passed jointly against all the persons in regard to a certain matter, while in regard to some other matter the decree may be passed severally against them. distinguishing portions of the subject-matter as payable or deliverable by each For instance, a decree may be passed against several persons, jointly for possession and severally for costs, specifying the amount of costs to be paid by each. Is such a decree a joint decree or a several decree for the purpose of the second paragraph of Explanation I? On this question, there is a conflict of decisions. The following two views have been expressed on the question -
 - 1. Such a decree is a joint decree According to this view, a decree is joint if any one of the reliefs granted under the decree is granted against the defendants jointly, even though some other relief may be given against each of the defendants separately 1
 - 2. In such cases, the decree must be treated as a joint decree in regard to the reliefs granted jointly against the defendants and as a decree passed severally against them in regard to the reliefs granted against each of them separately. Under this view, if the provious application related to a relief granted against a

.. ..

Note 141

⁽¹⁹³²⁾ A I R 1932 Cal 869 (870) 139 Ind Cas 786, Mon Mohan Cope v. Madhusudan Gope.

^{3. (1932)} A I R 1932 Cal 869 (870) 139 Ind Cas 786, Mon Mohan Gope v. Madhusudan Gope.

⁽¹⁹³³⁾ A I R 1933 Mad 789 (791): 145 Ind Cas 968, Mahomed Sahoob Leras Sayabu v. Mayamad Ammal

^{4. (1887) 1887} Bom P J 72, Yashwantrao v. Krishnabai.

^{1. (1996) 30} Mad 268 (269) 2 Mad L Tim 189, Subramania Chettiar v.

Article 182 (Expln. I) Notes 141-142 defendant separately, it would not save limitation in regard to any other defendant. But, if such application related to a relief granted jointly against the defendants, the application will save limitation for execution in regard to such relief, not only against the particular defendant against whom the application was made hat also against the other defendants.2

Where a relief has been granted by a decree against several persons jointly and another relief has been granted by the same decre against one of them separately, a previous application against all the judgment-debtors for execution in respect of the joint relief will sare limitation in respect of an application for the enforcement of the separate relief against the particular defendant against whom it has been granted.3

142. Several persons becoming entitled to or liable under decree after it is passed - Effect of application by or against one. - Explanation I only contemplates cases in which the decree, when it is passed, is passed in favour of or against more persons than one. Hence, where at the time when a decree is passed there is only one decree-holder or judgment-debtor but, subsequently, more than one person become entitled to the decree or become lishle under the decree, the Explanation does not apply. But, in such cases, under the terms of clause 5 itself, an application for execution or to take a step-in-aid of execution made by any of the persons entitled to the decree or against any of the persons liable under the decree, will save limitation with regard to all of them, provided the application is in accordance with law and is made to the proper Court.

Illustrations

- 1. A sole decree-holder dies. An application for execution made by one of his legal representatives will save limitation for the benefit of all the legal representatives.3
- 2. A sole decree-holder transfers a part of his decree to another. An application for execution by the transferee will save limitstion for an application by his transferor also.3
- (1937) A I R 1937 Mad 385 (391) : I L R (1937) Mad 616 : 163 Ind Cas 551 (F B), Chilambara Nadar v. Rama Nadar.
- 9. (1926) A I R 1926 All 440 (414) : 49 All 377 : 94 Ind Cas 961, Sahu Naudal Saran v Sahu Dharan Kerti Saran. [See also (1876) 25 Sath W B 310 (311), Choudhry Hurcehur Sin; 1
- v. Balco Hridey Narain.] 3. (1922) A I R 1922 All SSS (389): 41 All 166: 65 Ind Cas 35°. Fam Bricks
 - Eas v Deco Tewari.
 - (1937) A I R 1937 Cal 547 (515) : 114 Ind Cas 184, Charm Chandra F-7 *. Hrushilesh Ery.

Note 142

- 1. (1997) A I R 1997 Oudh 331 (333) : 163 Ind Cas 600 : 15 Luck \$33, Parkels Singh v. Eadhe Lal. 2. (1916) A I R 1916 Mad 919 (919); 31 Ind Cas 853, Maks Patro v. Norajans.
- (1925) A I R 1925 Omdh 50 (32) : 105 Inl Cas 611 : 5 Luck 127, Md. Sald
- Alı v. Sajjad Merea. 3 (1900) 14 Mad 257 (254) : 1 Mad L Jour 240, Pamasams v. Anda Pallak

3. A decree-holder assigns different parts of the decree to different persons. An application for execution made by any of the assignees will save limitation for the benefit of all.⁴

4. A sole judgment-debtor dies. An application made against one of his legal representatives will save limitation against all of them.⁵

It will be noticed that in illustrations 2 and 3 above the decree vests in severalty in different persons. Still, an application for execution by one of them saves limitation for the benefit of all.

EXPLANATION II.

142a. Explanation II. — See Notes 87 to 98, ante.

MISCELLANEOUS.

143. Revival of application. — An excention application must be deemed to be pending so long as no final order disposing it of judicially has been passed thereon A subsequent application in such a case for execution will be deemed to be one merely for the continuation of the original proceeding. On the other hand, where a final judicial order terminating the proceeding has been passed on the application, it cannot be revived, and a subsequent application for execution will be regarded as a fresh application and not as one for a revival or continuation of the original proceeding.³

- 4. (1922) A I R 1922 Mad 129 (180): 69 Ind Cas 277 : 45 Mad 85, Venkata
- Reddayya v. Yarahayya. (1921) A IR 1921 Mad 415 (417), Venkata Reddayya v. Yarahayya. 5. (1881) 8 All 517 (519). 1881 All W N 16, Ram Anu, Sevoak v. Hingu Lai,
 - (1887) 12 Bom 48 (50), Krishnaji Janardhan v Marrarrav.
 - (1912) 13 Ind Cas 318 (313) (Mad), Adusupalli Venkata Bao v. Marskurthu. Note 143
- (1933) A I R 1933 Mad 418 (421) 143 Ind Cas 1 56 Mad 490 (FB), Tripura Sundaramma v. Abdul Khader
 - (1915) A I R 1915 Mad 407 (411): 26 Ind Cas 214, Venkatamma v. Manikkam Nayani Varu.
 - (1928) A I R 1928 Mad 971 (971): 109 Ind Cas 375, Mallikaraja Pudu v. Nalla Venkaya.
 - (1926) A I R 1926 All 510 (511): 94 Ind Cas 869, Mt. Bitlee v. Kanhaiyalal (Application for execution ordered to be simply "filed"—Frah application in to treated as one for revival.)
 - (1906) 16 Mad L Jour 503 (504, 505) I Mad L Tim 291, Talapoors Appeals v. Maram Redds Rams Redds.
 - (1926) 94 Ind Cas SO (81) (Cal), Althoy Kumar v Naturi Kumar. (No fresh execution application is necessary to revive the first application which is pending before the Conrt and where there has been no dismissal of the original application for execution.)
 - (1891) 1894 Pun Re No. 27, Kundan Lat v. Mt. Makhani.
 - (1934) A I R 1934 All 4S1 (486) 56 All 791 . 146 Ind Cas IO17 (F B), Shwa Shankar Das v Mufis Syed Yusuf Hazan.
 - (1933) A I R 1933 Mad 418 (421) 143 Ind Cas 1. 56 Mad 490 (F B), Tripura Sundaramma v Abdul Khader.
 - (1937) A I R 1937 All 513 (514) 170 Ind Cas 507, Ziladar Singh v. Brijlal
 - (1879) 4 Cal 877 (881) : S Cal L R 161 4 Ind Jnr 236, Il urronath Bhunjo v. Chundal Ghose

Article 182 'Nntes '

1

Article 182 Note 143

The question whether or not an execution proceeding has been finally disposed of so as to be incapable of being revived or continued, is a question of fact which has to be determined having regard to the facts and circumstances of the particular case. The form of the order passed on the application is not sufficient to determine the question. The question is really one of substance and not of form.³

Where an execution proceeding is suspended by no act or default on the part of the decree-holder, the latter has a right to ask the Court to revive and carry through the execution proceeding. The leading case on the point is Qamanuddin Ahmed v. Jawahir Lall. In that case en order was made on an execution application dated in execution heing ancestral, the case should be struck off the file and the papers transferred to the Court of the Collector for the completion of the sale proceedings. A further order was later on passed to the effect that as e fee of Re. 1 had not been paid by the decree-holder on eccount of the Collector. More than three years after the date of the original epplication. Their Lordsbips of the Privy Council observed as follows:

"Their Lordships are of opinion that the execution proceedings commenced by the petition of the 24th August 1888 were never finally disposed of and that the epplication now under consideration was in substance es well es in form, to revire and earry through a pending execution suspended by no act or default of the decree-holder and not an application to intiate a new one." Where en order purporting to dispose of an execution proceeding

finally is made behind the back of the decree holder without giving

- (1908) 5 All L Jour 622 (625) : 1908 All W N 253, Safia Begam v. Shian Prasad.
- (1912) 13 Ind Cas 160 (160) (Mad), Parry & Co. v. Vaditelu Pillas. (Petition dismissed though attachment continued.)
- (1911) 11 Ind Cas 48 (50) (Cal), Kedar Nath v. Prodyot Kumar (Do.) [See also (1991) 1881 All W N 47 (47), Bhola Dat v. Tulss Singh)
- 3. (1916) A I R 1916 AH 21 (26) : 32 Ind Cas 1005, Sant Lat v. Sr. Newat Das.
 - (1905) 7 Bom L R 819 (820, 821), Mahomed Isoof Sahib v. Bashetarra Takeppa.
- 4. (1921) A I R 1921 All 99 (100) : G1 Ind Cas 417 : 43 All 983, Madho Prasad v. Darupada Biba.
 - (1903) 27 All 334 (339); 32 Ind App 102; 1 Cal L Jour 381; 2 All L Jour 397; 15 Mad L Jour 223; 7 Bom L R 438; 9 Cal W N CO1; 8 Sat 910 (P C), Qamarud-din Ahmad v. Jawahy Lal.
 - (1921) A I R 1921 Cal 472 (173) : 69 Ind Cas 207, Ajodhya Nath v. Srinath Chandra.
 - [1923] A I R 1923 All 600 (601): 77 Ind Ca₂ 871, Mahomed Hadi v. Debi Prasad. [See also (1923) A I R 1923 All 471 (472): 71 Ind Ca₂ 963, Amjad Ali Khan v. Md. Umman.]
- 5. (1905) 27 All 334 (538) 32 Ind App 102; 1 Cal L Jour 381; 2 All L Jour 397; 15 Mad L Jour 258; 7 Bom L R 439; 9 Cal W N COI; 8 Sar 810 (F C).

him an opportunity of being heard, it cannot be regarded as a judicial determination of the proceeding on the ments, and, consequently, the proceeding will be regarded as pending. A subsequent applica. tion will lie for the revival and continuation of the proceeding so disposed of.6

Where an order is made purporting to dispose of a matter against the decree-holder at the request of the decree-holder or on the ground of the default of the decree-holder in carrying on the proceedings, the proceeding cannot be revived.7 But, where such an order is made in a case in which the decree-holder could not take further proceeding owing to circumstances beyond his control, the order will be regarded as merely suspensory in its nature and a fresh application will be regarded as one for the revival and continuation of the original proceeding. Thus, where the execution is stayed or is prevented by injunction, or becomes impossible to be proceeded with, owing to a claim heing advanced to the property which is the subject of the execution, or owing to some other obstacle placed by the judgment debtor in the way of execution, and the application is "dismissed" or "struck off" nr "consigned to the record room," tho order will not be regarded as having finally disposed of the petition. and a subsequent application will be regarded as one for the revival . and continuation of the original proceeding * On the same principle.

- 6. (1927) A I R 1927 AR 16 (17) 100 Ind Cas 692; 49 AR 276 (F B), Chattar Singh v. Kamal Singh.
- (1927) A I R 1927 All 165 (167) , 49 All 509 , 104 Ind Cas 116 (F B), Bair Nath v. Ram Bhares.
- 7. (1913) 20 Ind Cas 563 (564) (Lah), Phusa v Surjan
- (1924) A I R 1924 Cal 419 (420) 74 Ind Cas 279, Rajans Bandhu v Kaliprasanna.
 - (1918) A I R 1918 Cal 332 (332) 45 Ind Cas 712, Midnapore Zamindari Co Ltd. v Dina Nath Sahu
 - (1698) 5 Cal W N 317 (318), Dhuhiram Srimans v Jojendra Chunder Sen.
 - (1915) A I R 1915 All 231 (232) 29 Ind Cas 381, Ibrahamas v. Hasanuddin Khan.
 - (1898) 21 Mad 257 (260) 8 Mad L Jone 25, Suryanarayana Pandarathar v. Gurunada Pillat.
- 8. (1918) 20 Ind Cas 439 (441) (Cal), Lat Govendnath v. Bhilar Sahu (Order must be regarded as suspensory though an form final)
 - (1904) 29 Mad 50 (53) 14 Mad L Jour 401 (P B), Suppa Reddiar v Ai udas Annal (Clam.)
 - (1937) A I R 1937 All 513 (514) 170 Ind Cas 507, Ziladar Singh v. Brig Lal. (1932) A I R 1932 Cal 19 (20) 59 Cal 1113 184 Ind Cas 939, Radha Ballau Ehan v Peary Lall Ghosh (Stay) (1891) 21 Cal 397 (391), Bashanta Nath Muttra v. Aughore Bose. (Do.)
 - (1875) 23 Suth W R 183 (184), Boobon Pugron Tubobildarinee v Saud Navie
 - Hossem. (Claim) (1934) A I R 1934 All 294 (296) 148 Ind Cus 525, Mt Nathan v. Mt. Mots. (Injunction.)
 - (1890) 5 Born 29 (34), Kalwanbhas Dipchand v. Ghanasham Lal. (Do.)
 - (1906) 83 Cil 689 (692), Guru Deo Narayan Susha v Amrit Narayan Sinha. (Do)

Article 182 Note 143

where the Court purports to dispose of a matter against the decreholder for no act or default of his, the order cannot be considered to have finally disposed of the application.

- (1924) A 1 R 1924 Mad 178 (179): 76 Ind Cas 126, Assamma Ayiss Umma v. P. K. Abdulla.
- (1898) 21 Mad 262 (263): 8 Mad L Jour 18, Saswarna Tetar v. Arubanandum Pillas. (Stay.)
- (1896) 23 Cal 437 (440), Rudra Naram Guria v. Pachu Maity. (Claim) (1912) 16 Ind Cas 484 (484) (Mad), Krishna Doss v Mahommed Mun
- Rowthen. (Do.) (1924) A. I. R. 1924 Mad 210 (211): 47 Mad 176: 79 Ind Cas 779, Surayya v. Venkataratnam. (Do.)
- (1921) 61 Ind Cas 817 (818) (Lah), Shib Das v. Ram Nath. (Do)
- (1877) 1 All 355 (357) (F B), Paras Ram v. Gardner. (Do.)
- (1868-69) 4 Mad H C R 261 (262, 263), Ragava Pishardi v. Valia Thambrakle. (Do.)
- (1924) A I R 1924 Cal 419 (420) : 74 Ind Cas 279, Rajani Bandhu Challerjes v. Kalı Prasanna Challerjee.
- (1903) 26 All 156 (159): 1903 All W N 221, Ruddar Singh v. Dhanpal Singh.
- (1903) 26 Åli 140 (143): 1903 Åli W N 211, Beni Prasad v. Sarju Prasad (1930) Å I R 1936 Cal 239 (241): 63 Cal 57: 162 Ind Cas 654, Kristo Kamins Debs v. Girtsh Chundra Mondal,
- (1887) 14 Cal 385 (887), Chandra Prodhan v. Gopi Mohun Shaha.
- (1886) 8 All 545 (548) : 1836 All W N 178, Nandram v. Silaram.
- (1900) 23 All 18 (20): 1900 All W N 178, Thabur Prasad v. Abdul Hussin. (1910) 6 Ind Cas 537 (539). 37 Cal 796, Madhabmoni Dasi v. Pamela.
- Lambert. (1924) A I R 1924 Pat 576 (578): 8 Pat 596: 78 Ind Cas 766, Bhagwanta
 - Roer v Zamer Ahmad Khan. Provious in for a for sppli-
- (1922) A I R 1922 All 433 (433); 65 Ind Cas 78, Ramlakhan Singh v. Lals Mewa Lal. (Execution proceedings consigned to record room without any default on part of decree-holder and without decision—Further
- application is really one in continuance of the prior one)
 (1919) A I R 1919 Cal 1934 (1955) 47 Ind Cas 911, Mohini Mohan Sirkar v.
 Navadusp Chandra Bissucas.
- (1920) A I R 1920 All 174 (175): 42 All 564 : 56 1nd Cas 1006, Balwart Surph v. Budh Singh. (Execution restrained by injunction.)
- (1923) A I R 1923 All 600 (601): 77 Ind Cas 671, Mahammad Hadi v. Debi Prasad.
- (1895) 17 All 425 (427, 428) . 1895 All W N 82, Lalhmi Chand v. Ballam Das (Stayed by injunction.)
- (1926) A I R 1926 All 331 (331, 332) : 91 Ind Cas 613, Giridharilal v. Ram Charan Lal.
- (1909) 2 Ind Cas 76 (77): 1909 Pun Be No. 45, Mulchand v. Muhammad. (Blocked by claim proceedings.)
- (1902) 30 Cal 407 (411), Ashrafuddin Ahmed v. Bepin Behari Mullich. (Attachment released owing to insolvency of judgment-debtor.)
- [1912] 13 Ind Cas 140 (141) (Cal), Rameswar Singh v. Ferpul Singh. (1935) A I R 1935 Mad 803 (893) : 59 Jan 803 : 139 Ind Cas 279 (F P), Abdul Ann Sainb v. Globkan Cheftur. (Order "possession obstructed, reti
 - ton dismissed ")
 [But see [1917] A I R 1917 Mad 447 [418]: 35 Ind Cas 591, Yellar[But see [1917] A I R 1917 Mad 447 [418]: 35 Ind Cas 591, Yellarraphe I Fenhalarya v. Matam Nanjayra. (Dismissal) of a application for non-payment of latta—Butsequent suit operating as obstacle—Second application after removal of obstacls is not one for continuation]!
- not one for continuation If

 9. (1915) A I IX 1915 All 410 (411): 30 Ind Cas 677: 37 All 518, Yakub Alt v.
 Durga Prasad.

An order striking off a proceeding is not sanctioned by any rulo of law.10 But, nevertheless, Courts very often do pass such orders and the question arises as to the effect of such orders A "striking off" of a proceeding may, under certain circumstances, amount to a final disposal of the proceeding, in which case the proceeding so disposed of cannot be revived " On the other hand, a proceeding may be struck off which has not the effect of finally disposing of the proceeding. The question depends upon the intention of the Court in making the order and the construction of the order itself 12 In Puddomonee Dossee v. Roy Muthooranath, 124 their Lordships of the Privy Council observed that "the striking an execution proceeding off the file in India may admit of different interpretations according to circumstances." When a very long time had elapsed between the original execution and the date on which it was struck off, their Lordships held that it should be presumed that the execution was abandoned and ceased to be operative unless the circumstances were otherwise explained Where the Court makes an order striking off the case "for the present," or the circumstances show that the order striking off must have been only a temporary one, the order will not he deemed to he one finally disposing of the proceeding which will consequently be deemed pending.13 Similarly, an order striking off a proceeding for administrative or statistical purposes, is not a final disposal of the proceeding which must therefore be considered pending.14

10. (1894) 10 Cal 416 (423), Bisua Sonan Chunder v. Binanda Chunder Dibingar

Adhikar.
(1927) A 1 R 1917 All 16 (19) 100 Ind Cas 692 49 All 276 (F B), Chhallar Singh V Kamal Singh.
(1926) A I R 1926 All 409 (409) 94 Ind Cas 1005, Sat Naram Lal v Ganga

(1926) A I R 1926 AR 409 (400) 94 Ind Cas 1005, Sat Naram Lal v Gang. Jai (1857) 10 Mad 270 (271), Ainar Aymangar v Seshammal.

(1872) 17 Suth W R 219 (220), Khoob Lall Singh v Toolsce Singh

11. (1879) 4 Cal 877 (881) 3 Cal L R 161 · 4 Ind Jut 236, Hurronath Bhunjo v Chunni Lall Ghose.

12 (1936) A I R 1936 All 820 (823) : 166 Ind Cas 106 (F B), Md. Tag1 v. Raja Ram.

12a (1873) 20 Suth W R 183 (186) 12 Beng L R 411 . 3 Sar 268 (P C)

13 (1893) 21 Cal 387 (391), Bashanta Nath Mettra v Aughore Nath Bose.

(1923) A 1 R 1923 All 471 (472) 71 Ind Cas 963, Amjad Ali Khan v.

(1891) 16 Bom 294 (302), Chintamani Damodar Igashe v. Balshastrs (1931) A 1 R 1931 All 458 (460) 133 Ind Cas 316, Prem Narain v. Ganga

Ram (Struck off "for the present")

Article 182 Note 143

Even where an execution proceeding is properly disposed of by a final order, it may be revived, where, for some reason not due to any default or neglect on the part of the decree-holder, it subsequently turns out that the nuder is untenable, inoperative or ineffective. Its Thus, where property is sold in execution, the decree is satisfied and the execution struck off or closed, but the sale is subsequently set aside at the instance of the judgment-debtor, it has been held that the decree-hulder can apply for the revival and continuation of the earlier proceeding. ¹⁵

Where the circumstances are such that the decree holder can ask for a revival of an earlier proceeding, even an application, in ferm one for execution, will be considered to be one for revival or continuation of earlier proceeding. In the result intents and purposes there is not much difference between revival and continuation of the former application. The

application. The tris, nowers:

(1909) 3 Ind (Order

14a (1933) 4 I R 1933 Mad 418 (422): 143 Ind Cas 1: 56 Mad 490 (F B), Bals

Tripura Sundaramma v. Abdul Khader. 15. (1916) A I R 1916 Cal 898 (899, 600): 82 Ind Cas 699, Krishna Prasad Singh

v. Matichand. (1930) A I R 1930 Cat 329 (332): 57 Cal 860: 126 Ind Cas 208, Alshoy

v. Abdool Khalak Huq v. Neayuddin. Pat 829, Nadhakishin

(1) Cas 707 : 10 Low Bur Rul 84. (1 Cas 80 : 2 Pat L Jour 115, Mt.

one 815, Bihari Lal

Referentiate to the decree, purchases property as holonging to ingineen debtor and is made to pay in a suit by the real owners of the property, a subsequent appliestion for execution is not a revive or continuation of the previous one which estudied in the abottee salely

(1918) A I R 1918 All 401 (402): 45 Ind Cas 531, Sundar Ind V.

182,)]

16. (1927) A I B 1927 All 16 (18): 100 Iad Cas 692: 49 All 276 (F B), Chhallar Singh v. Kamat Singh.

(1922) A 1 R 1922 AH 433 (433) : 65 Ind Cas 78. Ram Lakhan Singh v. Inda Visne Fall (433) : 65 Ind Cas 78. Ram Lakhan Singh v. Ul Khalak.

(1921) A 1 R 1921 Oudh 31 (31) : 26 Oudh Cas 206 : 80 Ind Cas 775, Akhlar

(1914) A I R 1914 Oudh 490 (432); 17 Oudh Cas 169; 25 Ind Cas 160, Girdhart Lal v. Damolar Doss. (See also (1924) A I R 1921 Pat 367 (369); 72 Ind Cas 862, Dharohar

Singh v. Ram Fravad Narain Sahat.)
17. (1933) A I B 1933 Mad 418 (423): 143 Ind Cas 1: 56 Mad 490 (F II), Tesputa
Sundaranma v. Abduk Khader.

necessary before an application can be considered to be one for the revival or continuation of the previous proceeding, that the subsequent application must be of the same nature as the previous one. It must be for the same relief and against the same persons. Where the character of the subsequent application is different from that of the prior one in the above particulars, the later application will not be regarded as one for revival but as a fresh application,18

An application for revival or continuation of a previous proceeding is not governed by this Article.19 but by Article 181 which is a residuary Article governing all applications not provided for elsewhere in the First Schedule.29 It was held in the undermentioned

18, (1918) A I R 1918 Mad 449 (449) : 43 Ind Cas 122, Thiagrapan v. Kannuswams Pillas.

(ISS4) 7 Mad 595 (596, 597); 8 Ind Jur 613, Firasami v. Athi. (First

(1923) A I R 1923 Cal 572 (574, 575) 76 Ind Cas 455, Rajendra v Abdul (1932) A I R 1932 All 278 (278) 54 All 573 139 Ind Cas 583 (F B), Gobardhan Das v. Dau Dayal.

(1883) 7 Bom 293 (296), Krishnay, Raghunath Kotharle v. Anandrav Ballal Kolhakar.

(1805) 18 All 9 (11): 1893 All W N 133, Mar Sarup v. Balgobind. (1912) 14 Ind Cas 172 (173) 34 All 39C, Rhefpal v. Thlam Singh (1924) A I R 1921 Pat 367 (369, 370): 72 Ind Cas 862, Dharohar Singh v. Ram Prasad Narayan Sahat.

19. (1912) 14 Ind Cas 264 (265) . 36 Mad 553, Subbachariar v. Muthuscerain Pillas.

20. (1934) A I R 1934 All 294 (296): 148 Ind Cas 525, Mt. Nabban Begam v. Mt. Mots Begam

(1900) 28 All 651 (653) 1906 All W N 152 3 All L Jour 845, Bihart Lal Missr v Jagarnath Prasad (1883) 6 All 23 (21) 1883 All W N 181, Basant Lal v Batut Bib; (1883) 5 All 243 (245) 1883 All W N 8, Raghubans Gir v Sheosaran Gir, (1931) A I R 1931 All 489 (460) 183 Ind Cas 316, Prem Naian v. Ganga

Ram. (Assumed)

(1880) 5 Bom 29 (35, 37), Kalyanbhas Depchandbhas v Ghansham Lal Jadunathy. (1930) A I R 1930 Cal 329 (332) 57 Cal 860 · 126 Ind Cas 268, Akshoy Kumar Roy v Abdul Kader Khan

(1913) 20 Ind Cas 439 (441) (Cal), Lat Gobind Nath Shah Deo v Bhilar Sahu.

(1911) 11 Ind Cas 972 (973) (Cal), Sheshk Makomed v. William Alfred Thomas

(1925) A I R 1925 Mad 981 (984) 88 Ind Cas 204, Mangamma Nayahuralu v. Ramdasappa.

(1924) A I R 1924 Mad 210 (211) 79 Ind Cas 779 47 Mad 176, Manyam

(But see (1910) 6 Ind Cas 537 (541) 37 Cal 796, Madha Mons Dasss v Pamela Lambert. (There is no rule of limitation applycable)

(1878) 3 Cal L R 26I (263), Golam Sahu v Chutterbhoo; Patuck (1909) 1 Ind Cas Sil (348) (Cal), Abdul Khayar v Reazuddin. (Question of limitation does not arise li

Article 182 Notes 143-146

cases21 that the starting point of time under that Article for an application for revival and continuation of a pending proceeding accrued day by day.

On the other hand, in the cases cited below23 it has been held that where the execution has been arrested by some obstacle for which the decree-holder is not responsible, time for application for revival will begin to run from the date when the obstacle is removed.

- 144. Onus. The burden of proving that an application for execution is not time-barred is on the applicant. But where prima facie it is within time, it is for the opponent to show how it is not within time.2 It was held in the undermentioned case3 that the onus of proving that the previous application was in accordance with law was also on the applicant. A contrary view, namely that the presumption is that an application is in accordance with law and that the onus of proving that it is not so is on the judgment-debtor, has been taken by the High Court of Madras.4
- 145. Local or special law. A special or local law may prescribe a period of limitation for an application for execution different from that prescribed by this Article. In such cases, it is the period prescribed by such local or special law that will govern the application. See Section 29, ante.
- 146. Effect of bar of limitation. The effect of not filing an execution application governed by this Article within the time prescribed by it is to rouder the decree or the order inoperative and unenforceable thereafter. 1 No Court can be called upon to take action
- 21. (1907) 31 Mad 71 (73, 76) : 18 Mad L Jour 46 ; 8 Mad L Tim 829, Chalaradi Ketiah v. Poloori Alamellammal.
 - (1925) A I R 1925 Mad 152 (152, 153) : 81 Ind Cas 897, Puttaya Krishnayya Shanbaga v. Puttannayna.
 - (1912) 14 Ind Cas 261 (265) . 36 Mad 553, Subba Chariar v. Muthutteram
- 22. (1914) A I R 1914 Oudh 430 (432) : 17 Oudh Cas 160 : 25 Ind Cas 160, Girdhars Lal v. Damodar Das
 - (1934) A 1 R 1934 All 294 (296): 148 Ind Cas 525, Mt. Nabban Degam V. Mt. Mots Begam. (A I R 1927 All 16 (F B), Followed.)
 - (1927) A I R 1937 All 802 (803) : 100 Ind Cas 790, Mt. Basanti v. Sirdar Mal Hardst Ras.
 - (1920) A I R 1920 All 174 (175) : 42 All 564 : 56 1nd Cas 1006, Balwani Singh v. Budh Singh.
 - (1926) A I R 1926 All 409 (410) : 91 Ind Cas 1005, Sat Narain Lal v. Gangajal.
 - Note 144 1. (1931) A I R 1931 Sind 160 (161): 131 Ind Cas 1182: 25 Sind L R 523, Volkart Brothers v. Achragram.
 - (1866) 5 Suth W R Mise 20 (20), Bharut Singh v. Sadut Ali.
 - 2. (1913) 19 led Cas 481 (495) (Lah), Fatch Chand v. Mt. Menghi Bai. 3. (1931) A 1 R 1931 Sand 160 (161): 131 Ind Cas 1182: 25 Sand L R 529, Fol-
- kart Brothers v. Achrajram. 4. (1926) A I R 1926 Mad 321 (322) 92 Ind Cas 709, Trustees, Paraklat Derdswom v. Venhatachalam Vadhyar.
- Note 146 1. (1863) 10 Suth W R 215 (215): 14 Peng L R 371 (Note). Ram Soendur Tewaree v. Sreenath Dewan.

Article 182

Notes

146-147

on such a decree,2 even under its inherent powers 3 Nor can such a decree be revived by any subsequent proceeding taken by the decreeholder, and it is immaterial that such proceeding is bona fide, or is permitted by the Court by inadvertence or is not opposed by the udament-debtor.6

A decree-holder whose rights are barred caugot revert to the position which he held prior to the institution of the suit and bring a fresh suit on the same cause of action? Such a suit would be barred on the principle of res judicata. This har, however, will not apply where the subsequent suit is based on a cause of action arising subsequent to the date of the decree.8

If the execution of a decree against several judgment debtors is time-barred as regards some judgment-debtors, it does not thereby become necessarily time-barred against others.9

147. Res judicata as applied to questions of limitation in execution proceedings. - See Note 19 to Section 3, ante.

(1850) 5 Cal 894 (897) . 6 Cal L R 437, Shumbhoonath Shaha v. Guruchurn Lahiri

(1925) A I R 1925 All 6 (8) · 83 Ind Cas 1033, Md. Abdul Raham Ehan v. Ram Bharos.

(1893) 1893 All W N 165 (163), Sahibzada v. Azez Bibs. (1867) Agra F B 78 (81) (1874 Edition p. 60), Ramjeewun Rai v. Deep

Narain Ras.

(1906) 83 Cal 679 (682), Oman Sheikh v. Halalurs Sheilh. 2 (1890) 1 Bom L R 84 (86), Krishna Timmabhatta v Vithal Gound Bhat.

3 (1935) A I R 1935 Rang 466 (471) 13 Rang 595. 159 Ind Cas 945, E P L S S Chettyar v. Official Receiver, Ramnad

4 (1966) 6 Suth W R Misc 118 (118), Luchmun Suhoy v Bhuguan Chunder. (1916) A I R 1916 Mad 729 (729) 30 Ind Cas 707 39 Mad 923, Varadara a Mudals v Murugesom Pillas

Bhagwan v. Dhondi.

lar v Asseemooddeen Sirdar. Grupa Kant Dahuru 23 Ind Cas 619, Chandrs Abdul

report a crist in it is a majorist from you am as seen in a . . . se . 200

5. (1879) 4 Cal 703 (709), Mungol Prashad Dichit v Shama Kanto Lahoru Chowdhry. 6. (1868) 9 Suth W R 390 (390, 391). Ram Dhun Roy v. Khazah Abdool Gunnee.

(ISSO) 5 Cal 891 (897) 6 Cal L. R 437, Shumbhoonath Shaka v Guruchurn Lahiri 7.

8. See Notes 33 to 40 to S. 11 of the Authors' Civil Procedure Code. 9. (1909) 1 Ind Cas 18 (49) (Lah), Banwara Lal v. Abdul Guffer.

Article 183

enforce a judgment, decree or order of any Court established by Royal Charter in the exercise its ordinary original civil jurisdiction, or an order of His Majesty in Council.

183.* To [Twelve] When a present right to enforce years. the judgment, decree or order accrues to somo person capable

of releasing the right:

Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment or the latest of such revivors, payments or acknowledgments, as the case may be.

Synopsis

- 1. Legislative changes.
- 2. Scope.
- 3. Application by notice of motion: when deemed to be made.
- 4. "Enforce."
- 5. "Established by Royal Charter."
- 6. "In the exercise of its ordinary original civil jurisdiction."
- 7. Order of His Majesty in Council.
- 8. Starting point.
- 9. Person capable of releasing the right.
- 10. Revivor.
- 11. Acknowledgments and payments.

Act of 1877, Article 180 Same as above.

Act of 1871, Article 169

Same as above except that the words "or an order of His Maysty in Council" were absent.

Act of 1859

No corresponding provision.

See Note 9

Other Topies

Application for final or personal decree in mortgage suit-Article not applicable See Note 4. Pts. 3a. 4 Application for restitution as a result of order of His Majesty in Conneil See Note 4, Pt. 6, 7 ... Application for transmission of decree does not amount to revivor See Note 10, Pt. 7 See Note 2, Pt. 8 Article not controlled by Section 48, C P C. Article 182 and this Article-Difference ... See Note 2, Pts 1, 3, Note 4, Pt. 1 Order recognizing assignment of decree ... See Note 10, Pt. 11 Revivor of decree against one judgment-debtor inoperative against others ... See Note 10, Pt. 12

Sections 6. 7 and 6-Not applicable

1. Legislative changes. - Section 19 of the Act of 1859 corres. pended to this Article hut did not contain the expressions "in the Exercise of its ordinary original civil jurisdiction" and "or an order of His Majesty in Council" In view of the absence of the former expression, it was held in a number of cases, that the execution of decrees etc., of a Chartered High Court passed in the exercise of its appellate surjudiction also would be governed by Section 19 referred to above. A Full Bench of the High Court of Calcutts,2 on the other hand, held that Section 19 was never intended to apply and did not apply to decrees etc., passed by Chartered High Courts in the exercise of their appellate jurisdiction. In the undermentioned cases their Lordships of the Privy Council observed that the preponderance of authority in India 32 was in favour of the proposition that the execution of the decrees of the High Court made on its Appellate Side was subject to three years' rule of limitation, and that the High Courts, though unquestionably "Courts established by Royal Charter" in the broad and general sense of the term were not. when exercising their appellate jurisdiction from the moffusil Courts. such Courts within the meaning of the Act of 1859.

The Act of 1871 gave effect to this view by inserting in Article 169 thereof, corresponding to Section 19 of the Act of 1859, the words "in the exercise of its ordinary original civil jurisdiction" But this Article also, like Section 19 of the older Act, did not contain the expression for any order of His Majesty in Council "The

Article 183 - Note 1

- 1. (1867) 8 Suth W R 267 (268), Ishan Chunder Choudhry v. Jugodishures
- (1867) 8 Suth W R 470 (472), Kishen Kinkur Ghow v Buroda Kant Boy
- (1870) 14 Suth WR 288 (289) 6 Beng L R 52, Chowdhry Wahid Ali v. Mullich Enayat Ali
- (1871) 16 Suth W R F B 1 (6) 7 Beng L R 704 (F B), Bam Churn Dysack v. Luckhee Kant Bornick.
- (1872) 14 Moo Ind App 465 (484) 10 Beng L R 101 . 17 Suth W R 292 2 Suther 561 3 Sat 62 (PC), Kristo Kinkur Roy v. Rajah Durrodacauxt Roy
- 3a See (1874) 21 Suth W R 391 (391), Hurbans Lal v Sheo Naram Singh (1871) 16 Suth W R F B 1 (6) 7 Beng L R 701 (F B), Bamchuran Bysach v. Luchhee Kant Borneth.
 - (1870) 5 Mad H C B 215 (218), Arunachalla Thudayan v Veludayan.

Article 183 Notes 1—2 absence of these words botb in the Act of 1859 and in the Act of 1871 gave rise to a difference of opinion as to the period of limitation applicable to the exention or enforcement of orders of Her Misjesty in Council. In the undermentioned case it was held that applications for such enforcement were governed by the three years rule of limitation governing excention of decrees in general, while in a later Full Bench decision it was held that there was no limitation at all applicable to such cases. In this state of circumstances, the word "or an order of Her Majesty in Council" were added to Article 189 by Section 21 of the Privy Council Appeal Act (VI of 1874). Article 180 of the Act of 1877 repeated Article 189 of the Act of 1871 as amended by Act VI of 1874. There is no difference between the present Article and Article 180 of the Act of 1877.

2. Scope. — This Article applies to applications to enforce a judgment, decree or order of a Chartered High Court in the exercise of its ordinary original civil jurisdiction, or an order of His Majetty in Council. Article 182 ante, applies to the execution of the decrees of Civil Courts not provided for by this Article. The two Articles provide different periods of limitation for execution of decrees and the difference is made to depend solely on the character of the Court which passed the decree. Limitation therefore depends not on the character of the Court to which a decree is sent for execution, but on the character of the Court which passed it. Thus, when a decree of a Chartered High Court passed in its ordinary original ciril jurisdiction is transmitted for execution to a moffusil Court, the limitation applicable is twelve years under this Article and not three vears under Article 182.

When an award is filed under Section 15 of the Arbitration Act, it is not only to be enforceable as if it were a decree in general, but having been filed in a particular Court it is to be enforceable as if it

Note 2

- (1890) 17 Cal 491 (197), Tencowrie Dawn v. Debendro Nath Mooker fee.
 (1896) 24 Cal 473 (490, 491), Jogemaya Dassi v. Thackomoni Dassi.
 (1993) 31 Mad 24 (27): 17 Mad L Jour 441: 3 Mad L Tum. 19, Sambanra
 - (1993) 31 Mad 24 (27): 17 Mad L Jour 441: 3 Mad L Tim, 19, Samesan Mudiliar v. Panchanada Pillas (1911) 11 Ind Cas 635 (637): 36 Mad 103, Krishna Doss v. Alambu Amasl.
 - [1913] H. Ind. Cas 0.35 (6.37); 30. 316d 103, Krimina Dolly V. Mandelli, and (1928) A. R. B1293 Ring, 317 (317); 114 Ind. Cas 671; 67 Ring 566, 416th Coart of Mohamed v. Mahomed Nor-Mahomed. (Decree of Chief Coart of Lower Burna executed by Rangoon High Cont.—Limitation for cree cutton is governed by Article 183, and on by Article 183.]
 - (1919) A I R 1919 Lab 95 [96] : 49 Ind Cas 982, Kanji Mal v. Kidar Nath.

 ^{(1865) 4} Suth W R Miso 10 (11), Dr. Alexander Wise v. Juygobundo Dako.
 (1881) 7 Cal 620 (622, 627): 9 Cal L R 402: 4 Shome L R 311, Gopal Saku Dro v. Joyram Teravry. (Caso under Atticle 267, Limitation Act of 1871—Appeal' includes appeal to the Privy Council and 'Appellac Court' includes the Judicial Committee of the Privy Council.

^{(1879) 2} All 763 (764), Narsiagh Das v. Narain Das. (Case under Article 179 (2) of Limitation Act of 1877.)

 ^{(1866) 6} Suth W R Miss 69 (70): Beng L R Sup Vol 506, Anundmosts Dosse v. Poorno Chunder Rai.

were a decree of that Court. When such award is filed in a Chartered High Court, this Article will govern its enforcement.²

The Article does not refer to Section 48 of the Code of Civil Procedure as Article 182 does, and is not in any way controlled by it. This is also made clear by clause (b) of Section 48 sub-section 2 of the Code which expressly exempts this Article from its operation.

3. Application by notice of motion: when deemed to be made. - Under the English practice, certain applications have to be made to the Court upon a notice of motion. Such notice is given by the solicitor for the party who wishes to make the motion to the solicitor for the opposite party stating that the Court will be moved on a particular day at a particular time. In In re An Arbitration between Gallop and the Central Queensland Meat Export Co. 2 1t was held by Denman, J., that the notice of motion, i. e the service of such notice on the solicitor for the opposite party, must be treated as an application for the purposes of limitation. In this country also, certain applications in the High Courts have to be made upon notice of motion. But the procedure in such cases is that a party prepares a notice in the prescribed form and submits it along with a copy thereof to the Bench Clerk or Assistant Registrar or other officer for insertion of the return day and signature by bim. The original and copy are then scaled with the scal of the Court and the copy returned to the party who then serves it on the opposite party or his pleader. It has been held by the High Court of Bombay, following Gallop's case,2 that the filing of the notice of motion in the proper office of the Court for signature and seal is an application for the purposes of limitation 4

The High Court of Calcutta, on the other hand, held in Khettra Mohan Singh v Kasi Nath Sich, that the mere issue of a notice of motion calling upon another to attend a Judge in Chambers on the hearing of an application is not sufficient to save the application from heing harred if the hearing of the application comes on after time. That esse was followed by the same High Court in Hinga 2 (1921) A IR 1927 Cal 853 (853) 101 Ind Cas 809 55 Cal 499. Belieders

1 See O 52 Rr. 3 to 10 of the Rules of the Supreme Court, 1883 and Form 18 of Appendix B thereto.

Artiole 183 Notes 2—3

Jute Mills Ltd v. Hardwarmull & Co.
3. (1882) 6 Bom 258 (260). Mayabhas Prembhas v Tribhurandas Jagman.

das
(1893) 20 Cal 551 (557). Putich Naram Chowdhry v. Chundrabat; Chow-

^{(1893) 20} Cal 551 (557), Patter Narain Chowdary 4. Chundrabati Chou dhrain:

^{(1884) 7} Mad 510 (545), Ganapaths v Balasundara.

^{(1909) 1} Ind Cas 168 (174) 36 Cal 548, Jogendra Chandra Poy v. Shamdas. Note 3

^{2 (1890) 33} W R (Eng) 621 (621) 59 LJQB 460 25 Q B D 230 62 L T 834.

³ Sec O 13 Rr 1, 2, 7 and S of the Original Side Rules of the Madras High Court.

^{4 (1924)} A I R 1924 Bom 36 (39) 47 Bom 764 86 Ind Cas 440, Venkapanya v. Naterally.

^{5, (1893) 20} Cal 899 (902).

Article 183 Notes 3-4 Bibi v. Manna Bibi, and it was held that even the service of the notice of motion on the opposite party would not prevent time running. In neither of the two cases above mentioned was Galley's case referred to, and on this ground it was held by a single Judge of the same High Court in the undermentioned case' that the service of the notice of motion on the opposite side is an application for purposes of limitation, whatever may be the view as to the effect of the issue of a notice of motion.

In Kuttayan v. Mannanna Etlappa, where a notice of motion was issued and served on the same day on the opposite party, it was held by the High Court of Madras, dissenting from Khettra Moharicase and Hinga Bib's case (supra), that the application must be deemed to have been made on the date of the issue of the notice of motion. It was further hold that this would be so even though the affidavit supporting the application was sworn to only later.

In the undermentioned case, where a tabular statement under Order 21 Rule 11, Civil Procedure Code, was filed in Court within time, it was hold by Costelle, J., that that amounted to the making of an application. His Lordship also doubted the correctness of the two earlier cases of the Calcutta High Court as to the issue of a notice of motion not being a valid application for the purposes of limitation.

4. "Enforce." — While Article 182 refers to the execution of a decree or order of any Civil Court, this Article refers to the enforcement of a pudgment, etc. The words "to enforce are wider than the words "to execute" and should be interpreted as equivalent to "to give full effect to." They are not limited to realization by execution, and oven if a proceeding is not strictly in execution but is a form of judicial rolled under the decree, it would still come within the meaning of the expression "to enforce a decree." They where ma mortgage decree the decree-holder makes an application praying that he may be at hiberty to add a person as party defendant to the suit and that therefore he may be at liberty to proceed to the suit and that therefore he may be at liberty to proceed to ellipropertors pursuant to the decree, the application will be one "to enforce a judgment" within the meaning of Article 183. But an application for an order for transmission of execution to another Court is not one for execution and cannot save limitation.*

^{6 (1903) 81} Cal 150 (181) : 8 Cal W N 97.

" idea Articlo 166) Januardes

" idea Articlo 166)

Dass v Bepin Behari Dhur.

 ⁽¹⁹²⁸⁾ A. I. R. 1929. All. 293. (201): 60. All. 767: 112 Ind. Cas. 876. Sohar.
 (1922) A. I. R. 1922. All. 293. (210): 66 Ind. Cas. 545; 41. All. 555. Birj. Lal. v...
 Dimodar Das.

^{2. (1911)} II 1nd Cas 918 (915): 33 Cal 913, Amloel Chond Paral v. Saral Chunder Mulergee.
2a (1999) A I R 1999 Lah 110 (111): 41 Pat L Jear 105, Rughnath & Co. v. Firm Ram Goyal Robal Ran.

Where a preliminary mortgage decree has heen passed by the Original Side of the High Court, an application under Section 89 of the Trensfer of Property Act for an order absolute was held to be one to enforce the judgment within the meaning of this Article. But these decisions were given with reference to the law as it stood hefore the Ciril Procedure Code of 1908 was omacted. Having regard to the form of the decrees which are now passed in mortgage suits, and having regard to the terms of Order 34 Rule 3 sub-rule 2 of the Code, an application for a final decree cannot be said to he en application to enforce the preliminary decree and such an application will be governed by Article 181 end not by this Article ^{5a} An application for a personal decree under Order 34 Rule 6 of the Civil Procedure Code is an epplication for a new decree in the suit and not en application for enforcing a judgment or decree Article 181 and not the Article applies to it.

An application against the sons for execution of a Privy Council decree against the father for costs is governed by this Article and limitation commences to run from the date of the decree ⁵

There is a difference of opinion as to whether an application for restitution as a result of an Order of His Majesty in Council is one to enforce the Order in Council within the meaning of this Article. According to the High Court of Allahabad, this Article applies to such applications, A contrary view has been hold by the High Court of Patna.

- 6. "Established by Royal Charter."—The Suddar Court which had heen established hefore the Supreme Courts in India was a Court not established by Royal Charter, and Section 19 of the Act of 1859 was held not to apply to the enforcement of decrees of that Court 1
- 8, (1914) A I R 1914 P C 150 (153) 42 Cal 776 42 Ind App 88 27 Ind Cag 683 (P C), Munna Lai Parruch v Sarat Chunder Mulery,
 - (1910) A I R 1916 Mad 288 (289) 29 Ind Cas 237 39 Mad 544, Mohomad Hussain Sahib v. Abdul Kareem Sahib.
- 3a (1935) A I R 1935 Rang 239 (240) 13 Rang 825 157 Ind Cas 784, M. A. L. M. Chelliar Firm v. Maung Po Hmyan
- (1925) A I R 1925 Cal 834 (636, 645) 52 Cal 828 89 Ind Cas 1 (F B), Francis Higgins Pell v. Minne Gregory, (1935) A I R 1935 Rang 157 (188) 13 Rang 305 156 Ind Cas 701, Chocha.
- (1935) A 1 R 1935 Rang 187 (183) 13 Rang 305 156 Ind Cas 701, Chock lingam v Maung Tun Yin.
- 5 (1932) A I R 1932 Pat 261 (264) 11 Pat 435 139 Ind Cas 397, Chandra Chur Deo v Mt Shyam Kumara.
- 6 (1922) A I R 1922 AN 238 (239) 44 AN 555 66 Ind Cas 545, Berj Lal v.
 Damodar Das.
 (1928) A I R 1928 AN 298 (294) 50 AN 767 112 Ind Cas 676, Sohan Bib
 - v. Basjnath Das (1921) 61 Ind Cas 806 (807) (All), Madhusudan Das v. Brej Lal.
- 7. (1927) A I R 1927 Pat 208 (208) 6 Pat 252 102 Ind Cas 614, Jugal Kishore v. Homeshwar Singh

Note 5

1. (1869) 12 Suth W R 343 (313), Huro Pershad Roy Chowdhyy v. Manick Lushkur. Article 183 Notes 5--7

But the Supreme Court was established by Royal Charter and the enforcement of its judgments was held to be governed by Section 19 of the said Act.2

By Section 164 of the Companies Act, 1913, the District Judge has the same jurisdiction and the same powers as the High Court. But it cannot be said that the District Judge becomes, by virtue of that Section, "the High Court" for the purpose of enforcing a payment order under the said Section. This Article therefore does not apply to the enforcement of such an order.5

6. "In the exercise of its ordinary original civil jurisdiction." - This Article applies only to judgments, decrees and orders of the Chartered High Courts in the exercise of their ordinary original civil prisdiction. Ordinary jurisdiction embraces all such as is exercised in the ordinary course of law and without any special step being necessary to assume it, as opposed to extraordinary jurisdiction, which the Court may assume at its discretion upon special occasions and by special orders.1 A judgment ordered to be entered up under Section 86 of the Indian Insolvency Act is a indgment passed by the High Court in the exercise of its ordinary original civil jurisdiction.2

The words "original jurisdiction" clearly exclude appellate jurisdiction. The enforcement of indgments etc. passed by the High Court in its appellate jurisdiction is therefore not within this Article.

7. Order of His Majesty in Connoil. - Before the decision of the Full Bench in Luchman Prasad v. Kishan Prasad,1 there was a difference of opinion as to whether the Article applied to the exocution of Orders in Council passed in cases decided by the High Court in its appellate jurisdiction. It was settled by the Full Bench, referred to, that where an order of Her Majesty in Council modifies, alters or confirms the decree of the High Court, whether passed in

Note 6

^{(1869) 12} Suth W R 73 (73), Thehoor Doss Gossain v. Kashee Nath Mun-

^{2. (1862) 1} Mad H C R 201 (205), Coultroup v. Smith.

^{3 (1938)} A I R 1938 Lah 368 (368), Panna Lal Jain v. Jain Bank of India

^{1. (1889) 13} Bom 520 (533) : 16 Ind App 156 : 13 Ind Jur 251 : 5 Ear 400 (P C), Candas Narrondas Natuahu v. C. A. Turner.

^{2 (1897) 11} Bom 139 (152), In the matter of Candas Narrondas. (Per West, J.)

^{(1889) 18} Kom 520 (533) · 16 Ind App 156: 13 Ind Jur 251: 5 Sar (00 (P.C), In the matter of Candas Narrondas Nativahu v. C. A Tarner.

^{(1905) 83} Cal 560 (564) O Cal W N 952, Annola Prasad v. Nobo Kuhore Roy. (Per Sale, J -Though the High Court exercises a special jurisdiction under the Insolvency Act, the High Court nevertheless exercles it as a part of the ordinary jurisdiction with which it is vested)

^{3 (1574) 21} Suth W R 291 (391), Hurbuns Lall v. Sheo Narain Singh.

Artiole 183 Notes 7—8

its original or appellate jurisdiction, that order is the paramount decision in the suit and its enforcement is governed by this Article.

See also the undermentioned cases to the same effect.

But when the Privy Council dismisses an appeal for want of protecution, there is no final decree or order of His Majesty in Council as the matter of the sunt is not judicially dealt with and the order cannot he regarded as an order adopting or confirming the decision appealed from. When such an order is made, the only decree capable of execution is the decree appealed from and if it has been passed by the High Court in its appealed from and if it has been principle will apply where the appeal before the Privy Council is withdrawn without further prosecution.

Where the preparation of a final decree was a purely ministerial act to enable the Order in Conneil to be onforced, it was held that it could not be contended that the execution proceedings were not taken to enforce the Order of Iris Majesty in Council.⁵

The Court executing the decree is not competent to go behind the order passed by His Majesty in Council whether right on wrong, the only duty of the Courts in India heigh to give effect to the order, punctually observe, obey and carry the same into execution ⁶ In receiving and filing for the purposes of execution an order of the Privy Council, the High Court does not exercise any discretionary power but performs a function of purely ministerial character ⁷

- 8. Starting point. Time, under this Article, runs from the date when a present right to enforce the judgment, decree or order accrues to some person capable of releasing the right (See Note 9.)
- 2 (1893) 20 Cal 551 (555), Putteh Naram Choudhry v Chundrabati Choudhrain
- (1900) 23 All 152 (151) 27 Ind App 200 5 Cal W N 52 2 Dom L R 978 10 Mad L Jour 200 7 Bar 788 (P C), Bhup Indar Bahadur Singh v Bijai Bahadur Singh (1903) 4 Ind Cas 402 (103) (Cal), Kauina Deh v Aghare Nath Mookersee
 - (1909) 4 Ind Cas 402 (403) (Cal), Kantini Debi v Aghore Nath Mookerjee (1873) 19 Suth W R 186 (187), Ganesh Dutt Singh v. Mungree Ram
- (1873) 19 Suth W R 186 (187), Ganesh Dutt Singh v. Mungres Ra Chowdhry.
- 3 (1914) A I R 1914 P C 66 (67) 23 Ind Cts 649 36 All 350 (P C), Abdul Majid v Jawahir Lal
- (1914) A I R 1914 P C 65 (66) 36 All 281 41 Ind App 104 23 Ind Cas 644 (P C), Batul Nath v. Mt Munns Des.
- 4 (1921) A I R 1921 Mad 126 (191) 61 Ind Cas 979, Fiswanatha Sastra v. Sitalahahma Ammal
- [1921] A I R 1921 Pat 280 (283) 56 Ind Cos 977, Krishna Prasad v. Wazir Narain Singh.
- 5 (1924) A I R 1924 Pat 576 (579) 3 Pat 596 76 Ind Cas 766, Mt Bhaguanta Kuer v Zamir İhmad Khan
- 6 (1925) A I R 1925 Pat 40 (41) 3 Pat 327 79 Ind Cas 794, Somer Singh v Mt From Des
- 7 (1895) 22 Cal 960 (972), Premiali Mullici v Sumbhoonain Roy (1914) A I R 1914 Mad 222 (221) 33 Mad 833 22 Ind Cas 235, Krishna Bhoonain v Raya of Vigagomegaran

Article 188 Notes 8—10 A frosh starting point is also furnished by -

 A revivor of such judgment, decree or order. (See Note 10 infra.)

A part payment of the priocipal money secured by such judgment, etc.

3. A payment of interest on such mecory.

4. An acknowledgment of the right therete, io writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled therete or his agent.

9. Person capable of releasing the right. The words "capable of releasing the right" exclude persons who are legally incapacitated, such as infants and lunaties. In the case of such persons, therefore, time under this Article does not begin to run at all until the locapacity is removed. Sections 6, 7 and 8 ante, do not govern this Article which is solf-contained. A decree was passed in favour of a minor on the 30th November 1915, and the micor attained majority in October 1918. He made an application on the 31st March 1923, to onforce the decree, more than twelve years from the date of the decree but within twelve years of the date of his attainment of majority. If Sections 6 and 7 read with Section 8 applied to the case, the application was obviously barred by limitatioe. It was held by the Patna High Court that those Sections did oot apply and that the application having been made within twelve years of the applicant's becoming "capable of releasing the right" within the meaning of this Article, there was no bar.1

10. Revivor.—The term "revivor" in this Article refers to the Common Law practice which prevailed to the Supreme Courts in Iodia under which, if a writ of execution was not sued out within a year and a day, it was necessary to revive the decree by a preces known as serie facias or more fully serie facias quaere executioner non habitat, that is to say, by calling on the judgment debtor to show cause why the plaintiff should not have execution against him. The dectrine has its origin in the presumption of satisfaction which was held to arise when execution had not been applied for within a year and a day after the date of the judgment.

When the Code of Civil Procedure came to be enacted in 1882, the rule was embedied in Section 248 thereof and is now found in Order 21 Rule 22 of the Code under which, when an application is made more than one year after the date of the decree, notice is to 50 to the person against whom execution is prayed, requiring him to show cruse on a date to be fixed, wby the decree should not be executed against him 1

cuted against him.1

Note 9
1. (1930) A 1 R 1930 Pat 141 (142): 123 Ind Cas 411, Muschar Sohn 7.
Kishun Narayan Prasad.
Note 10

(1916) A. I. R. 1918 Med. 513 (513); 40 Med. 1127; 40 Ind. Cas. 603, Krubnatical V. Gajendra Naudu.
 (1907) I. Ind. Cas. 163 (190). 36 Cal. 513, Joyendra Chundra Pay v. Span
Date. (Object of writ of series faceus discussed)

Article 183 Note 10

It follows from what has been stated above, that in order to constitute a "revivor" of the decree, there must be, expressly or hy implication, a determination by a Court or other person duly qualified to make it, that the decree is still capable of execution, and that the decree holder is entitled to enforce it. An order for execution operates as a revivor, because it necessarily implies such a determination." Where the objection of the pudgment-delitor is overruled and it is decided that the decree is not barred by limitation, the effect of the order is to entitle the decree-holder to proceed with the effect of the order is to entitle the decree-holder to proceed with the effect of the order as to entitle the decree-holder to proceed with the off eviving the decree within the meaning of this Article. But the mere issue or service of a notice under Order 21 Rule 22 is not sufficient. A further order by the Court is necessary to constitute review, "

Where execution cannot proceed without the leave of the Court, the granting of that leave will have the effect of reviving the decree. But where no such leave is required, the mere issue of notice of execution does not constitute revivor.

The determination referred to above must be hy a Court or person duly qualified to make it. Where the Registrar of the Court had no power to decide whether the decree was or was not capable of execution but passed orders that execution should issue, it was held that such an order did not operate as a "reviror."

```
2a(1938) A I R 1938 Pat 372 (373) - 176 Ind Cas 566, Sarju Singh v. Bhagwat Prasad Singh
```

time }
4. (1925) A I R 1925 Cai 668 (671) 87 Ind Cas 61, Amulya Ratan v Banku

(1503) 30 Cal 979 (991, 982) 7 Cal W N 793, Monohar Das v. Futteh Chand

5 (1915) A I R 1915 Cal 350 (351) 11 Ind Cas 216, Chatterput Singh v Daya Chand Marwars.

6 (1916) A I R 1916 Cal 488 (491, 492) 43 Cal 993 . 36 Ind Cas 602 (FB), Challetpai Singh v Saat Summa Mat (1936) A I R 1936 F499 15 Pat 102 . 163 Ind Cas 411, Sarju Singh

6) A I R 1936 Pat 1938 (399) 15 Pat 102 . 163 Ind Cas 411, Sarju Sing
 v Bhaqwat Prasad

 ^{(1909) 4} Ind Cas 402 (403) (Cal), Kamini Debi v Aghore Nath Muherjes.
 (1916) A I R 1916 Cal 488 (491) 43 Cal 903 36 Ind Cas 602 (FD), Chutterput Singh v Sant Sumars Mai

 ^{(1881) 6} Cal 504 (511) 8 Cal L R 23, Ashoolosh Dutt v Doorga Churn.
 (1897) 24 Cal 244 (247), Susa Hoosen v Monohur Das

^{(1904) 26} All 861 (364) 1904 All W N 51 1 All L Jour 80, Umrao Singh v. Lachmi Narain

^{(1893) 20} Cal 551 (559), Futteh Naram Chowdhry v Chundrabats

^{(1884) 7} Mad 540 (543), Ganapats v Dalasundara

 ^[1909] I Ind Cas 168 (173) 86 Cal 543, Jogendra Chundra Roy v. Syam Das.
 (1937) A I R. 1937 Pat 321 (323) 15 Pat 316 169 Ind Cas 872, Ghastram
 Maryani v. Shiba Prassad Singh

⁽¹⁹³⁸⁾ A I R 1938 Pat 372 (373, 374) 176 Ind Cas 566, Saryu Singh v. Bhaywat Prasad Singh (Issuing notice under O 21 R 22, Civil

Article 183 Notes 10—11 Au application for transmission of a decree from the High Court to the District Court is not by itself a revivor of the decree within the meaning of this Article. Even an order transferring the decree for execution to another Court does not give a new starting point of limitation qua the order of transmission.

An order of dismissal of an execution case for want of prosecution does not amount to a rovivor. Nor can the dismissal of an application by the judgment-dehter to set uside the decree, filed by him pending execution, be regarded as an order determining the question whether the decree-holder has a subsisting right to execute the decree. Such an order does not therefore fall within the definition of revivor. 19

An order recognizing the assignment of a decree and allowing the assignee to execute it, constitutes a revivor. 11

A revivor of a decroe against one joint judgment debtor will ack keep it alive against joint judgment debtors. So also, where a mortgage decree determines the rights of prior and puison mertgages and allows each mortgages to enforce his mortgage, the puison mortgages is not entitled to claim that his right to execute theoretic accrued only after the prior mortgageo had exhausted his remedies, and execution applications by the prior mortgage will not amount to a revivor of the right of the puison mortgage. So

11. Acknowledgments and payments. — Sec Note 37 to Section 20, ante.

^{7. (1927)} A I R 1927 P C 73 (75): 101 Ind Cas 24: 54 Cal 500: 54 Ind App 129 (PC), Banku Behary Chatterji v. Narandas Dutt

⁽¹⁹¹⁵⁾ A I R 1915 Cal 850 (351) . H Ind Cas 216, Chutterput Singh v. Daya Chand Marwars.

Chana Marcari. (1925) A I R 1925 Cal 213 (215): 84 Ind Cas 68, Salaluddin v. Afral Degum. (1925) A I R 1925 Cal 213 (216). 78 Ind Cas 1001, Narain Das Ditt v.

Banku Behars Chattoradhya. 8. (1916) A I R 1916 Cal 488 (494) · 43 Cal 903 : 96 Ind Cas 602 (FB), Chutter-

put Singh v Saul Sumara Mal. (1929) A I R 1929 Mad 252 (253): 118 Ind Cas 775: 52 Mad 590, Palaniappa

Chettar v. Vallsammas Acht. (1937) A I R 1937 Rang 477 (479): 173 Ind Cas 160: 1937 R L R 287, Kannappa v. Ishar Singh.

Kannappa v. Ishaar Singh. O (1925) A IR 1925 Cal 663 (670) 67 I. O. 61, Amulya Ealan v. Banku Eshari IO (1928) A IR 1923 Cal 686 (639) : 55 Cul 578 : 110 Ind Cas 401, Muthar

^{11 (1929)} A I R 1929 Mad 252 (256): 52 Mad 590: 118 Ind Cas 775, Palaniffs Chelliar v Vallammas Ach.

^{12. (1918)} A I R 1918 Mad 513 (514). 40 Mad 1127 · 40 Ind Cas 603, Krishnays v. Gajendra Kardu.

⁽See also (1916) A I R 1916 Mad 1033 (1039): 31 Ind Cas 1003: 33 Mad 1102, James Russel McLaren v. Feerah Kariu)

THE SECOND SCHEDULE

Repealed by S. 3 and Second Schedule of the Repealing and Amending Act, 1930 (8 of 1930).

The Second Schedule before the repeal was as follows:

THE SECOND SCHEDULE

TERRITORIES REFERRED TO IN SECTION 31, (See Section 31.)

The Presidency of Fort St. George

The Presidency of Bombay.

The Sambalpur District of the Bengal Division of the Presidency of Fort William.

The United Provinces of Agra and Oudh.

The Central Provinces.

Aimer-Merwara.

Burma.

THE THIRD SCHEDULE

Repealed by S. 3 and Second Schedule of the Second Repealing and Amending Act, 1914 (17 of 1914).

The Third Schedule before the repeal was as follows:

THE THIRD SCHEDULE.

ENACTMENTS REPEALED.

(See Section 32.)				
Year.	No.	Short title.	Extent of repeal.	
1877	xv	The Indian Lumitation Act, 1877.	The whole.	
1877	XVII	The Pnnjah Conrts Act, 1877.	So much as has not been repealed.	
1879	хп	The Registration and Limitation Acts Amendment Act, 1879.	In the title the words "and the Limitation Act, 1977," and after section 107, from the words "and whereas" to the end of the Act.	
1881	V	The Prohate and Administration Act, 1881.	Section 156.	
1887	ıx	The Provincial Small Cause Courts Act, 1887.	Section 36.	
1888	VII	The Civil Procedure Code Amendment Act, 1888.	In the title and in the preamble, the words "and the Indian Limitation Act, 1877," and of section 65 so much as has not been repealed.	
1892	VI	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892.		
1899	x	The Carriers Act, 1899.	Section 3.	
1900	VI	The Lower Brrma Courts Act, 1900.	So much of section 47 and the first schedule as relates to the Indian Limitation Act, 1877.	
1900	XI	The Indian Limitation Amendment Act, 1900.	The whole.	
1906	10	The Presidency Small Cause Courts Act, 1906.	Section 5.	

APPENDIX

The Punjab Limitation (Custom) Act (1 of 1920).

AN ACT TO AMEND AND CONSOLIDATE THE LAW GOVERNING THE LIMITATION OF SUITS RELATING TO ALIENATIONS OF ANCESTRAL IMMOVABLE PROPERTY AND APPOINTMENTS OF HEIRS BY PERSONS WHO FOLLOW CUSTOM IN THE PUNIAR.

WHEREAS it is expedient to amend and consolidate the law governing the limitation of suits relating to alienations of ancestral immovable property and appointments of heirs by persons who follow custom in the Punjab;

AND whereas the previous sanction of the Governor. General has been accorded under Section 79 (2) of the Government of India Act, 1915, to the passing of this Act;

IT is hereby enacted as follows:

1. (1) This Act may be called the Punjab Limitation Short title and extent. (Custom) Act, 1920.

(2) It extends to the Punjab.

2. The Punish Limitation (Aucestral Land Alienation) Act. 1900, is hereby repealed.

Definition

3. In this Act -

"Alienation" includes any testamentary disposition of property.

"Appointment of an heir" includes any adoption made or purporting to be made according to custom.

Savings.

Repeal.

- 4. This Act shall not affect any suit pending in any Court on the date on which this Act comes into force
- 5. Subject to the provisions contained in Sections 4 to 25 (inclusive), of the Dismissal of suits Indian Limitation Act, 1908, and notwithstanding anything to the contrary contained in the first schedule of the said Act. of the descriptions specified in the Act every suit, of any description specified in the schedule annexed to this Act, instituted after the period of limitation prescribed the period of limits. therefor in the schedule shall be dismissed, although limitation tion herein prescribed has expired. has not been set up as a defence

Provision for suits for which the period prescribed is shorter than that prescribed by the Indian Limitation Act or the Punjah Limitation Act.

6. Notwithstanding anything herein contained, any suit for which period of limitation prescribed by this Act is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, or by the Punjah Limitation (Ancestral Land Alienation) Act, 1900. may be instituted within the period of one year next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, or by the Punjab Limitation (Ancestral Land Alienation) Act, 1900, whichever period expires first.

THE THIRD SCHEDULE

Repealed by S. 3 and Second Schedule of the Second Repealing and Amending Act, 1914 (17 of 1914).

The Third Schedule before the repeal was as follows:

THE THIRD SCHEDULE.

ENACTMENTS REPEALED.
(See Section 32.)

Year.	No.	Short title.	Extent of repeal.	
1877	xv	The Indian Limitation Act, 1877.	The whole.	
1877	xvII	The Punjah Courts Act, 1877.	So much as has not been repealed.	
1879	ZII	The Registration and Limitation Acts Amendment Act, 1879.		
1881	v	The Probate and Administration Act, 1881.	Section 156.	
1887	ıx	The Provincial Small Cause Courts Act, 1887.	Section 36.	
1888	VII	The Civil Procedure Code Amendment Act, 1888.	In the title and in the preamble, the words "and the Indian Limitation Act, 1877," and of ecction 66 so much as has not been repealed.	
1892	VI	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1892.		
1899	x	The Carriers Act, 1899.	Section 3.	
1900	V1	The Lower Burma Conrts Act, 1900.	So much of section 47 and the first schedule as relates to the Indian Limitation Act, 1877.	
1900	XI	The Indian Limitation Amendment Act, 1900.	The whole.	
1906	1V	The Presidency Small Cause Courts Act, 1906.	Section 5.	

APPENDIX

The Punjab Limitation (Custom) Act (1 of 1920),

AN ACT TO AMEND AND CONSOLIDATE THE LAW GOVERNING THE LIMITATION OF SUITS RELATING TO ALIENATIONS OF ANOESTRAL IMMOVABLE PROPERTY AND APPOINTMENTS OF HEIRS BY PERSONS WHO FOLLOW CUSTOM IN THE PUNIAR.

WHEREAS it is expedient to amend and consolidate the law governing the limitation of surts relating to alienations of ancestral immovable property and appointments of heirs by persons who follow custom in the Punjah;

AND whereas the previous sanction of the Governor-General has been accorded under Section 79 (2) of the Government of India Act, 1915, to the passing of this Act;

IT is hereby enacted as follows:

Short title and extent. (1) This Act may be called the Punjab Limitation (Custom) Act, 1920.

(2) It extends to the Punjab.

Repeal. 2. The Punjah Limitation (Ancestral Land Alienation) Act, 1900, is hereby repealed.

Definition

3. In this Act -

"Alienation" includes any testamentary disposition of property.

"Appointment of an hour" includes any adoption made or purporting to he made according to custom.

Savings.

4. This Act shall not affect any suit pending in any Court on the date on which this Act comes into force.

5. Subject to the provisions contained in Sections 4 to 25 (inclusive), of the Dississal class and the description of the description the contrary contained in the first schedule of the said Act, it is instituted after the period of limitation present this Act, instituted after the period of limitation present the contrary contained in the period of limitation prescribed that the Act, instituted after the period of limitation prescribed that the contrary contained in the schedule shall be dismissed, although limitation has not been set up as a defence.

6. Notwithstanding anything herein contained, any suit for which period of Provision foresist for which the period of limitation prescribed by the Lamia Limitation Act, 1903, or by Prescribed is shorter than the prescribed is shorter than the prescribed is shorter than that prescribed may be unstituted within the period of one year next after the roamencement of this Act or within the period prescribed for the commencement of this Act or within the period prescribed for the commencement of this Act or within the period prescribed for the commencement of this Act or within the period of one year next after the Pongha Limitation (Ancestral Land Alienation) Act, 1900, whichever a control of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the period of the p

Limitation on suits for possession where no declaratory decree has been ob tained.

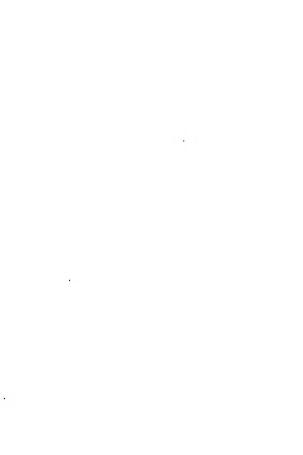
tom -

- 7. Subject to the provisions of Section 6 -
- (a) No suit for the possession of ancestral immovable property on the ground that an alienation of such property or the appointment of an heir is not binding on the plaintiff according to custom shall lie if a suit for the declaration that the alienation rappointment of an heir is not so binding would be time-barred, unless a suit for such a declaration has been instituted within the period preservibed by the schedule.
- (h) No suit for the possession of ancestral immovable property by a plaintiff on the ground that he is as heir appointed in accordance with custom entitled thereto shall he if a suit for a declaration that his alleged appointment as beir was validly made according to custom would he time-barred, unless a suit for such declaration has been instituted within the period prescribed by the schedule.
- 8. When any person obtains a decroe declaring that an alienation of ancestral immovable property or the appointment of an heir is not binding on him according to oustom, the decree shall cours for the benefit of all persons entitled to impeach the alienation or the appointment of an heir.

SCHEDULE.

	POHEDOTE:	
Description of suit.	Period nf Limitation.	Time from which period begins to run.
A suit for a declaration that an alienation of ancestral immovable property will not, according to custom, be binding on the planntin after the death of the slienor or (if the alienor is a female) after ber death or forfeiture of hor interest in the property. 2. A suit for possession of ancestral immovable proporty which has been alienated on the ground that the alienation is not hinding on the plaintiff according to customs.	Six years .	Firstly:—If the alienation is by a registered deed, the date of registration of such deed. Secondly:—If the alienation is not by a registered deed. (a) if an entry regarding the alienation in the Register of Mutations has been attested by a Revenue officer under the Pumph Land Revenue Act, 1887, the date on which the entry is attested: (b) If such entry has not been attested, the date on which the alienate takes physical possession of the whole or appart of the property alienated in pursuance of such alienation; (c) in all other cases, the date on which the alienation comes to the knowledge of the plain till.

Description of suit.	Period of Limitation.	Time from which period hegins to run.
(a) if no declaratory decree of the nature referred to in Article 1 is obtained	Six years	As above.
(b) if such declaratory decree is obtained.	Three years .	The date on which the right to sue accrues, or the date on which the declaratory decree is oh- tained, whichever is later.
 A suit for a declaration that an alleged appointment of an heir is invalid as heing op- posed to custom or in fact never took place. 	Six years .	The date on which the alleged appointment of an heir becomes known to the plaintiff.
 A suit for possession of ancestral immovable property on the ground that an appointment of an heir is invalid or never in fact took place— 		
 (a) if no declaratory decree of the nature referred to in Article 3 is obtained; 	Six yeara .	The date on which the alleged appointment of an heir becomes known to the plaintiff.
(b) if such declaratory decree is obtained.	Three years .	The date on which the right to sue accrucs, or the date on which the declaratory decree is ob- tained, whichever is later.
 A aust for a declaration that an alleged appointment of an heir was validly made ac- cording to custom. 	Six years .	The date when the rights of the alleged appointed heir are interfered with.
6. A smit for possession of ancestral immovable property by a plaintiff on the ground that he is an heir appointed in accordance with custom en- titled thereto.		
(a) if no declaratory decree of the nature referred to in Article 5 is obtained:	Six years .	The date when his rights as such heir are interfered with.
Article 2 is obtained; (b) if such declaratory decree is obtained.	Three years.	The date of the death of the person making the appointment or (if such person is a female) of her death or of the forfeiture of her interest in the property or the date on which the declaratory decree is obtained, which over is later.



THE INDIAN LIMITATION ACT. IX OF 1908 VOLUME III

ARTICLES 141 TO 183

WITH SYNOPSES IN PARALLEL COLUMNS

FIRST SCHEDULE

FIRST DIVISION : SUITS—(Continued) PART VIII - TWELVE YEARS-(Continued)

ARTICLES

SYNOPSES

141. Like suit by a Hindu or Muhammadan entitled to the possession of immoveable property on the death of a Hindu or Muhammadan female.

- Twelve years. -When the female dies.

the female p. 1960 7. "On the death of a Hundu or Muhammadan female"; p 1961 8 Suit by a transferee from a Hindu or Muhammadan entitled etc. ' p. 1962
9. Death, if includes civil death — Effect of surrender by female or re-marriage of widow : p. 1963 10, "Hindu or Muhammadan female" : p. 19 11. "Immoveable property" : p. 1966 12 Sust contemplated as one against a person in possession : p. 1967 *** * *

10. Duly involving decisional as to adoption by include

142. For possession of immoveable property when the plaintiff, while in possession of the property, has been dispossessed or has

discontinued the possession. - Twelve years. -

The date of the dispossession or discontinuance.

144. For possession of immoveable property or any interest therein not hereby otherwise specially provided for.

20 Onus of proof; p. 1982

female . p. 1978

21. Starting point p 1982 22. Local and special law p. 1984

7. Interest in immoveable property: p. 2015 8, "Plaintiff" in Article 142, meaning of: p. 2017 9, "Has been dispossessed or has discontinued the possession": p 2018

10. Defendant must be in possession at the date of the suit;

p 2021

11. "Pessession," what is: p. 2024

12. Possession of part, if possession of whole: p. 2030

13 Possession of hone is possession of site: p. 2033

14. Plaintiff only in constructive possession - Dispossession or discontinuance of possession : p. 2033

- Twelve years, -When the possession of the defendant becomes adverse to the plaintiff.

 Principle that possession follows title: p. 2034 Adverse possession, what is: p. 2042 17. "Defendant" : p. 2048 18. Possession is not adverse if it can be referred to a lavid title - p 2048 19. Possession by Hindu female: p. 2050 20. Possession under a temporary arrangement between men bers of a family: p. 2054 21. Possession in heu of dower ; p. 2055 22. Possession in heu of maintenance : p. 2056 23. Possession by the holder of a life estate, if can te situe to reversioners: p. 2057 Possession of property belonging to person under disability: p. 2057 25. Possession of insolvent; p. 2060 26. Possession of mortgagor, when becomes adverse to the mortgagee: p. 2061 27. Possession of a co-mortgagor who redeems the mortgage p, 2062 e proig that 2003 ention 3, 2070 tage! p. 2070 33. Possession by the mortgages, after redemption of scorsions to mortgaged property : p. 2070 34. Possession of co-mortgages paying off other co-mortgagees : p. 2070 C----1 - - 9070 elaiming p. 2094 41. Adverse possession by co-owners against stranger, p. 2021 42. Abandonment by co-owner : p. 2094 43, Relinquishment by co-owner : p. 2095 45. Suit for possession by one co-owner against another n: p. 2097 2039 in temple: 49. Adverse possession of property of Hindu, Muhammada or Buddhist religious endowments : p. 2099 p. 2099 ~ 50 Possession of co-trustees after division among them: p. 2103
51. Possession of alieneo from co-trustee: p. 2103 52. Acts referable to exercise of easement : p. 2103 52a Adverse possession—Vendor and vendos : p. 2104 52b Possession held under mistake, if can be adverse. F. 2106 53. Possession of wrongdoer must be actual : p. 2107 54 Adverse possession of surface and of sub-soil rights is the

55. Possession of person who could not advance a hestile title; p. 2110

2nte atr . D. 2118

56. Permissive possession: p. 2110

SYNOPSES 2639 becomes nments: p. 2125 61bAdverse possession of rights not recognized by law: 62. Possession of owner, if can be adverse to himself. p. 2126 63 Possession must be continuous for the statutory period : 64 Break in adverse possession, effect of p 2128
65 Delivery of symbolical possession, if interrupts adverse possession: p 2132 66. Decree does not interrupt adverse possession p 2187 67. Effect of attachment on adverse possession p. 2139 68. Decision of Revenue Officer or Court regarding boundary, of intercupts adverse possession . p. 2141 69. Subsequent assertion of a different title by defendant, if affects his adverse possession . p. 2143 70. Submerged land p. 2143 71. Receiver and adverse possession 72. Abandonment of possession p 2149 73. Confiscation and re-grant p. 2150 74. Revenue sale - Adverse possession against purchaser ! p 2150 75 Dispossession of wrongdoer by another, if interrupts adverse possession p 2150 76. Possession must be open p 2151 ':'' e interest he pur-

p. 2127

. . ċ٠

82. Adverse possession against co-owners . p 2150 83. Adverse possession against widow is not adverse against subsequently adopted son . p. 2159 84 Adverse possession against mortgagor, if adverse against mortgagee p. 2160 85. Adverse possession against mortgagee, if adverce to mortgagor p 2162

86 Adverse postession against tenant, if adverse against landlord p 2165 87 Onns of proof p 2169 88 Judgment against third party does not after onus; p 2184 89. Question immaterial when evidence has been let in on both sides p. 2185 94. Adverse possessor can get only what quondam owner had: p. 2195 1 -- -98. Question of adver-e rossession, if one of law or fact : p 2205 99. Adverse possession by or against Crown: p. 2207 99a Adverse possession by or against the public : p. 2208 100 Special or local law : p. 2208

- 143. Like suit, when the plaintiff has become entitled by reason of any forfeithre or breach of condition.
 - Twelve years. -
- When the forfesture is incurred or the condition is broken.

144. For possession of immoveable property or any interest therein not hereby otherwise specially provided for.

- Twelve years. -

When the possession of the defendant becomes adverse to the plaintiff.

 Legislative changes : p. 2209 2. Scope of the Article ; p. 2210

3. Forfeiture and breach of condition, distinguished:p. 93 4. Forfeiture of tenancy-General : p 2211

5. Forfeiture of tenancy for breach of condition of alex

See Article 142.

PART IX - THIRTY YEARS

p. 2231

145. Against a depositary or pawnee to recover moreable property deposited or pawned. - Thirty years. -

The date of the deposit or pawn.

146. Before a Conrt established by Royal Charter in the exercise of its ordinary original civil jurisdiction by a mortgagee to recover from the mortgagor the possession of immoveable property mortcaged

- Thirty years. -When any part of the principal or interest was last paid on account of the mortgage debt.

146A. By or on hehalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession. - Thirty years. -

The date of the dispossession or discontinuance.

1. Legislative changes : p. 2221

2 2229 the plaint

. . . L. Awthle . D. 2232

2221

1. Legislative changes : p. 2232

suits for Pesse

: p. 2235

and the poses 6. Effect of bar of suit by expiry of period prescribed by the Article: p. 9000

deposit of title

Part $X \rightarrow Sixty years$

147. By a mortgagee for foreclosure or sale.

Sixty years.

When the money secured by the mortgage becomes due

148. Against a mortgagee to redeem or to recover possession of immoveable property mortgaged. -Sixty years. -

When the right to redeem or to recover possession accrues :

Provided that all claims to redeem arising under instruments of mortgage of immoveable property situate in Lower Burma which had been executed before the first day of May 1863 shall be governed by the rules of limitation in force in that province immediately before the same day.

149. Any suit by or on behalf of the Secretary of State for India in Council, the Secretary of State, the Crown Representative, the Central Government or any Pro-

vincial Government, except a suit

before a Federal Court in the exercise of its original jurisdiction - Sixty years. -

When the period of limitation would begin to run under this Act against a like suit by a private person.

Montgages . p. 2244 4. Starting point : p 2244

Legislative changes • p. 2246

la Score p. 2248 2 "Mortgagee" . p. 2249

3. Redeeming co-mortgagor, position of : p. 2251

4. Adverse possession by mortgages against mortgager : 5 Invalid transfer of equity of redemption to mortgagee -Effect : p 2257

8 Mortgages purchasing mortgaged property in contrasention of O 34 R 14, Civil Procedure Cods-Effect p 2261

9. Void mortgage - Person entering into possession under such mortgage p 2261 10. Extinction of mortgage by decree or order of Court :

p 2262 11. Effect of proceedings under Bengal Regulation, 17 of 1806 p 2263

1^ 20 This Article and Article 126 p 2269

21. Suit by puisno mortgages for redemption of prior mortgage p 2270
22. Suit by execution purchaser of equity of redemption :

p 2271 23 Burden of proof p 2271

24 Laches of mortgagor p 2271

25 Effect of bar of limitation: p 2272 26 Special or local law p 2272

27 Punjab Redemption of Mortgages Act, 2 of 1913 ... Dismissal of application for redemption under-Effect . p. 2272

1 Legislative changes p 2274 2. Scope of Article . p 2274
3 Applicability of Limitation Act to Government—Cene-

ral p 2275 4 Sait by or on behalf of the Government - Illustrative

eases p 2277 p. 2277

on deriving title

8. Resumption or assessment of lakhiral grants - Right of Government, whether extinguished by bar of limitation.

9. Acquisition of title by adverse possession against Government . p 2280 10 Special or local law p 2281

11 "Pravate person" p 2281 12. Acquisition of easement against Government; p. 2232

SECOND DIVISION: APPEALS

150. Under the Code of Criininal Procedure, 1898, from a sentence of death passed by a Court of Session.

— Seven days. —

The date of the sentence.

150A. Under the Cede of Criminal Procedure, 1898, from a finding rejecting a claim under section 443 of that Code.

- Seven days. -The date of the finding.

151. From a decree er erder of any of the High Courts of Juditature at Fert William, Madras, Bombay and Lahere in the exercise of its eriginal jurisdiction.

- Twenty days. -

The date of the decree or order.

152. Under the Code of Civil Procedure, 1908, to the Court of a District Judge.

— Thirty days —
The date of the decree or order appealed from.

153. Under the same Code te a High Court from an order of a Subordinate Court refusing leave te appeal to His Majesty in Council. — Thirty days —

The date of the order.

154. Under the Code of Criminal Procedure, 1898, to any Court other than a High Court.

— Thirty days. —

The date of the sentence or order appealed from.

 155. Under the same Code to a High Court, except in the cases provided for by Article 150 and Article 157

— Sixty days. —
The date of the sentence or order appealed from.

1. Legislative changes : p. 2282

2. Scope and applicability; p. 2282

1. Legislative changes: p. 2283 2. Scope and applicability: p. 2283

1. Legislative changes: p. 2284 2. Scope of the Article: p. 2284

2. Scope of the Article: p. 2284 8. Starting point: p. 2285

4 Amendment of James finder Spetten 180 Civil Procedute

p. 2289

1. Scope of the Article: p. 2290

 Scope and applicability: p 2291
 Appeals from orders under Sections 476 and 478-A of the Graminal Procedure Code—Starting point: p 2291

3. Appeals from pail: p. 2292

1. Scope: p. 2293
2. Appeal from order of Civil Court under Section 176 of the 2793
4 the

5. Starting point : p. 2294

156. Under the Code of Civil Procedure, 1903, to a High Court, except in the cases provided for by Article 151 and Article 153.

- Ninety days -The date of the decree or order

appealed from

from.

157. Under the Code of Criminal Procedure, 1898, from an

order of acquittal. - Six months. -The date of the order appealed

158. Under the Code of Civil Procedure, 1908, to set aside an award.

– Ten days. – When the award is filed in Court and notice of the filing has been given to the parties.

159. For leave to appear and defend a snit under the summary procedure referred to in Section 128 (2) (f) or under Order 37 of the same Code

— Ten days — When the summons is served

160. For an order under the same Code, to restore to the file an application for review rejected in consequence of the failure of the applicant to appear when the application was called on for hearing - Fifteen days -

When the application for review is rejected.

161. For a review of judgment hy a Provincial Court of Small Causes or hy a Court invested with the jurisdiction of a Provincial Court of Small Causes when exereising that jurisdiction - Fifteen days. -

The date of the decree or order.

6. "Decree or order" . p. 2293

7. Several decrees in same suit : p 2300 8. Amendment of decree - Effect of . p 2300

9 Review of judgment-Effect of . p. 2301

10. Death of party after decree . p 2802

11. Ex parte decree set aside by trial Court, but restored by High Court p 2302 12 Section 4 and this Article . p. 2803

J. Legislative changes . p. 2303 Scope and applicability . p. 2303

THIRD DIVISION APPLICATIONS

1 Legislative changes p. 2305

2 Scope and applicability p 2805 3 Period of limitation p 2306

4. Starting point ' p. 2306 5 Extension of time ' p. 2309

6. Exclusion of time : p. 2808 7. Effect of bar : p. 2809

1. Scope . p 2310

2. Extension of period fixed p. 2310

Starting point p. 2310
 Rangoon Small Cause Court Rules 1922, Rule 101 . p. 2310

1 Scope of the Article . p. 2311 2. Starting point p 2311

Legislative changes p. 2312

2 Court of Small Causes: p 2312 3 "Review," meaning of p. 231;

4 Security deposit p 2312

162. For a review of judgment by any of the following Courts, namely, the High Courts of Judicature at Fort William. Madras, Bombay, Lahore, and Nagpur and the Chief Court of Sind in the exercise of its original iurisduction.

- Twenty days. -

The date of the decree or order.

163. By a plaintiff for an order to set asida a dismissal for default of appearance or for failure to pay costs of service of process or to furnish security for costs. - Thirty days. -

The date of the dismissal.

164. By a defendant, for an order to set aside a decree passed ex parte.

- Thirty days. -

The date of the decree, or where the summons was not duly served. when the applicant has koowledge of the decree.

165. Under the Code of Civil Procedure, 1908, by a person dispossessed of immoveable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree to be put into possession,

- Thirty days. -The date of the dispossession. 1. Legislative changes : p. 2314 2. Scope of the Article : p. 2314 3. "Review" : p. 2315

4. "Original jurisdiction" ; p. 2315

5. Application for review, when maintainable : p. 2316 6. Starting point : p. 2316

missed for default:

use Courts

4. "Defendant," if includes his legal representative: p. 2326

5. Starting point : p. 2327 6. "Summons," meaning of : p. 2330 to to correins on the original

2934

1. Legislative changes : p. 2336 2. Scope and applicability of the Article : p. 2336

3. "By a person dispowered" : p. 2937 4. "Disposessed." meaning of : p 2838 5. Starting point of limitation : p. 2838

adjustment and set aside sale - Limitation , p 2348

salcable interest in the property-Limitation : p 2350

1. Legislative changes: p. 2340

166. Under the same Code to set aside a sale in execution of a decree (including any such application by a judgment debtor).

1. Asginshive changes: p. 2020
2. Scope of Article . p. 2342
3. "Under the same Code" . p. 2347
4. "To set asde" : p. 2347
4. "To set asde" : p. 2347
4. Void sale — Application in respect of : p. 2347
5. "Decree" : p. 2347 - Thirty days. -6. Adjustment of decree after sale - Application to record The date of the cale 7. Application under Order 21 Rule 89, Civil Procedure Code p. 2349 8. Application on ground of judgment-debter having no 9 Sale in insolvency proceedings-Applicability of Article : p. 2351

167. Complaining of rests. tance or obstruction to delivery of possession of immoveable property decreed or sold in execution of a decree.

- Thirty days. -The date of the resistance or obstruction.

168. For the re-admission of an appeal dismissed for want of prosecution. — Thirty days. —

The date of the dismissal.

18 Application by notice of motion, when deemed as made : p. 2353
14 Buit to avoid sale treated as proceeding under Section 47, Civil Procedure Code-Limitation , p. 2353 15. Setting aside of sale under inherent power- Limitation :

p 2354 16. Fresh ground for setting asida sale, if can be urged after

limitation; p. 2354 17. Extension of time under this Article p. 2354

18 Computation of limitation under the Article - Effect of fraud : p. 2357

to Theaner and freed on 1009 Sec. 11 1110 4 1 ٠,

p. 2363 p 2364

5. Transfer of execution case to another Court and limitation for an application under Order 21 Rule 97 p 2365

'r Order 41

5. Application to restore appeal rejected for non-payment of conrt-fee: p. 2369 6. Dismissal without purisdiction : p. 2369

7. Application made in time-Party impleaded afterwards -Effect : p 2370

8. Starting point : p 2370 9. Court cannot extend time prescribed by this Article !

p. 2370

10. Rangoon High Court Rules of Procedure: Rule 9 subrule 2 : p 2371

169. For the re-hearing of an appeal heard ex parte.

- Thirty days. -

The date of the decree in appeal, or, where notice of the appeal was not duly served, when the applicant has knowledge of the decree.

170. For leave to appeal as a panper.

Thirty days. -

The date of the decree appealed from.

171. Under the Code of Civil Procedure, 1908, for an order to set aside an ahatement.

- Sixty days. -' The date of the ahatement.

172. Under the same Code by the assignee or the receiver of an insolvent plaintiff or appellant for an order to set aside the dismissal of a suit or an appeal.

-Sixty days, -

The date of the order of dismissal.

173. For a review of judgment except in the cases provided for hy Article 161 and Article 162. — Ninety days. —

The date of the decree or order.

174. For the issue of a notice under the same Code, to show cause why any payment made out of Court of any money payable under a decree or any adjustment of the decree should not be recorded as certified.

- Ninety days. -When the payment or adjustment is made.

175. For payment of the amount of a decree by instalments. - Six months. -

The date of the decree.

 Legislative changes: p. 2372 Scope of the Article: p. 2372
 Burden of proof: p. 2372

4. Starting point : p. 2373

5. Extension of time under Section 6 : p. 2375 6. Power to grant time for payment of court-fee : p. 2375

I. Legislative changes : p. 2376

2. Scope: p. 2376 3. Starting point : p. 2378

4. Applicability of Section 5 to applications governal this Article : p. 2379

1. Legislative changes : p. 2380 2. Scope and applicability : p. 2380

3. Starting point : p. 2381

1. Legislative changes: p. 2382

, Act to applica

5. Starting point : p. 2332

6. Court-fee and limitation : p. 2393

1. Legislative changes: p. 2385

Legislative changes; p. 2355
 Scope and applicability; p. 2385
 Certification by decree-holder; p. 2387
 Certification by decree-holder; p. 2387

Legislative changes: p. 2393

3. Effect of order on application made beyond six months:

Decree must be for payment of money: p. 2334
 Btarting point: p. 2334

2647

176, Under the same Code to have the legal representative of a deceased plaintiff or of a deceased appellant made a party.

- Ninety days -

The date of the death of the deceased plaintiff or appellant.

177. Under the same Code to have the legal representative of a deceased defendant or of a deceased respondent made a party.

— Ninety days. —

The date of the death of the deceased defendant or respondent.

178. Under the same Code for the filing in Court of an award in a suit made in any matter referred to arbitration by order of the Court or of an award made in any matter referred to arbitration without the intervention of a Court.

— Six months. — The date of the award.

179. By a person desiring to appeal under the same Code to His Majesty in Council for leave to appeal

- Ninety days. --The date of the decree appealed

from

180. By a purchaser of immoveable property at a sale in

immoveable property at a sale in execution of a decree for delivery of possession.

— Three years. —

When the sale becomes absolute.

181. Applications for which no period of limitation is provided elsewhere in this Schedule or by Section 48 of the Code of Civil Procedure, 1908.

— Three years.—

When the right to apply accrues. Extension and exclusion of time prescribed by this Article. p 2397
 One representative applying within time — Another, if

can be brought on zecord afterwards . p. 2398

1. Legislative changes . p. 2399

2. Scope , p. 2100

1. Legislative changes: p 2405 2 Scope of the Article, p. 2406 3, "Award" p 2407 4, Starting point: p. 2407

4. Starting point: p. 2407 5. Extension of time p 2408

1. History of the Article : p. 2409

2 Scope p. 2409
3 Starting point p 2410
4 Extension of time p 2411

4 President of time b Satt

I. Legislative changes . p 2412

2 Scope of the Article . p 2413 3 "By a purchaser" : p 2414

4 Starting point p. 2415

5 Extension and exclusion of time . p. 2415 6. Second application . p 2415

1. Legislative changes . p. 2418

Scope p 2418
 "Or by Section 48 of the Code of Civil Procedure, 1903";
 p. 2420

p. 2420

4 Applications for final decree in mortgage suits under

7. Application for resultation—Section 144, Civil Procedure

Code p. 2429

8 Application for execution p 2432

9. Application to set uside sale . p. 2432

٠.

such refund) the date of such lastmentioned decree or, in the case of an appeal therefrom, the date of the final decree of the Appellate Court or of the withdrawal of the eppeal, or

7. (where the application is to enforce any payment which the decree or order directs to be made at a certain date) such date.

Explanation I. - Where the decree or order has been passed severally in favour of more persons than one, distinguishing portions of the subject-matter as payable or deliverable to each, the application mentioned in clause 5 of this article shall take effect in favour only of such of the said persons or their representatives as it may be made by. But where the decree or order has been passed, jointly in favour of more persons than one, such epplication, if made by any one or more of them, or by his or their representatives, eball take effect in favour of them ell.

Where the decree or order has been passed severally against more persons than one, distinguishing portions of the subject-matter as payable or deliverable by each, the application shall take effect against only such of the said persons or their representatives as it may be made against. But where the decree or order has been passed jointly against more persons than one, the application, if made against any one or more of them. or against his or their representatives, shall take effect against them all.

Explanation II. -- "Proper Court" means the Court whose duty it is to execute the decree or order.

31. Decree becoming inexecutable by reason of subsequent events: p. 2482

32. Decree on condition to be performed by the decree-holder

himself: p. 2483 33. Appeal ; p 2484

31. Appeal whether should be against the decree or order sought to be executed p 2485
35. Appeal against portion of decree, if saves limitation for

execution of whole decres p 2486

41. Abatement of appeal; p. 2493

42 Dismussal of appeal for default, whether gives a fresh start of limitation for execution p 2495

43. Order returning appeal for presentation to proper Court :

48 "Where there has been a review of judgment"; p. 2193 49 Review in part p 2501 50 "Where the decree has been amended" p, 2501

51. Where amended decree is appealed against . p. 2506

55 Application barred by limitation p. 2514

55a. Application in respect of person or property outside inrisdiction . p. 2514

56. 1 ·

57 Application for relief in mode not permitted by law; p 2517
58 Application in respect of decree incapable of execution;

p. 2517 58a. Application for execution of conditional decree without performing condition: p. 2517

59 Application not accompanied by certificate required by law ' p. 2518

60. Omission to sign or verify application p 2519 "] Pers . 1. .pet .m .f 1 -----....

64 Omission to state previous adjustments . p. 2520 * Agl. Jan. 1 ... •

68 Failure to file copy of decree . p. 2522

69 Failure to produce encumbrance certificate p. 2523

70 Omission to give description of property sought to be proceeded against p 2523

71. Defects of vakalatnama p 2524

72 Other defects p 2595
73. Application valid only if made by decree-holder or his representative p 2526

74. Application by attaching creditor p 2527

74a. Application by decree-holder of attached decree or his transferee : p. 2527 75. Application by Court of Wards : p. 2528

76. Application by person represented in representative suits: p. 2528

77. Application by stranger claiming to be representative: p. 2528 79. Application by transferee of decree : p. 2529

79. Application by agent: p 2532

80. Application by pleader : p. 2533

91. Application by executor of decree-holder without probate. Bla. Previous application for execution need not be against

the same person or property or for the same relief: p. 2538

82. Application against legal representative of judgmentdebtor · p. 2534

83. Application where judgment-debtor is a minor : p. 2585 84. Application against trustee judgment-debtor who has ceased to be trustee subsequently : p. 2536

85. Application against judgment debtor who was dead at

applica-

f ırt

800. Withdrawal of application : p. 2544 RT "Dename O . 1

p. 2555 100. The step must be in furtherance of execution : p. 2555 101. Application for step-in-aid must be one in accordance

with law and to the proper Court : p. 2557 102. Step must be one to be taken by the Court : p. 2553

the must see one to be taken by ton town re-100. There should be an application: p. 2559 p. 2559 p. 2569 204. Plaint if can be treated as an application in the control of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of the properties of th

103. The step must be with reference to the decree sought to be executed : p. 2504

109. Application for execution, not in accordance with law may still be regarded as application for step-in aid;

110. Application for step-in-sid does not lie where execution 1s barred : p. 2565

1 n 2565

2651

115. Application for postponement of execution proceedings : p. 2567 116. Application for mane of notice under Order 21 Rule 22, Civil Procedure Code p. 2569 116a. Application for proclamation of sale under Order 21, Rule 66, Civil Procedure Code: p. 2570 1 .1 .4. . : . . . --- . . - 0---122. Application by decree-holder for leave to bid, if step-inaid: p 2577 123. Application for delivery of possession by decree-holder anction-purchaser: p 2579
124. Certification under Order 21 Rule 2 of the Civil Procedure Code . p. 25:00

125. Application for payment out of moneys lying in Court :
p. 25:02

126. Application for analytication of representatives : p. 25:94 127. Application for substitution of name of transferce of decree, if step-in-aid: p. 2585 128. Other illustrative instances of step-in-aid : p. 2585 129. "Final order": p. 2587 130. Order transferring decree for execution : p. 2591 130a. Order returning application: p. 2592 131. Final order need not be in accordance with law : p. 2592 131a. Retrospective operation of amendment of Chuse 5; p 2592
192. Chause 6 . p. 2592
193. Chause 7—General . p. 2593
134. "Payment which the decree or order directs to be made at a certain date"; p. 2591 135. "Certam date", p 2596 136 Instalment decres : p. 2598 ----140 Decree for partition : p 2608 141. Decree partly joint and partly several against several defendants: p. 2609 142. Several persons becoming entitled to or hable under decree after it is passed — Effect of application by or against one: p 2610
142a. Explanation II; p. 2611 143. Revival of application : p. 2611 144. Onus : p. 2618

183. To enferce a judgment, decree or order of any Court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council.

- Twelve years. -

When a present right to enforce the judgment, deerce or order accrues to some person canable of

releasing the right : Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or seme interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent. the twelve years shall be computed from the date of such reviver, payment or acknowledgment or the latest of such revivers, payments or acknowledgments, as the case may be.

1. Legislative changes: p. 2621

2. Scope: p. 2022 3. Application by notice of motion ; when deemed to be

made: p. 2623
4. "Enforce": p. 2624
5. "Established by Royal Charter": p. 2625 6. "In the exercise of its Ordinary Original Civil Jurisdia-

tion": p. 2626 7. Order of His Majosty in Conneil: p. 2626

8. Starting point : p. 2027

9. Person capable of releasing the right : p. 2028

Revivor: p. 2628
 Aeknowledgment and payments: p. 2630

GENERAL INDEX

Note. — A=ARTICLE; Cl=CLAUSE; FN=FOOT NOTE reference;

P=Preamble; N=Norr number in the					
S=Section.	СОШ	щ	эцца	ary	7 3
bandonment					
By owner: See Possession_Abandonment,					
By trespasser : See Adverse possession-Interruption.					
batement					
—Cause of		Α	171	N	2
(a) Death of party to suit	•••		172		
(b) Failure to bring oo record legal representative of plaint					
or defendant who dies after preliminary but before fi	aal				
decree		A	177	N	5
(c) Insolvency of plaintiff — Whether causes abatement	of				
—Date of—What is	•••		172		
	•••		171		
- Representative suit under Civil P. C , 8 92-Whether abates	•••		171		
— Revision applications— Whether subject to abatement ——Setting aside of	•••	A	177	N	2
(a) Application for					
(i) Abatement caused by failure to substitute legal rep					
aentative of deceased defendant or respondent in the					
—Time cannot be enlarged for aufficient cause	40	Α	177	N	7
(ii) Application for substitution, whether can be treated	ın	**			•
substance as one for setting aside abatement		Α	171	N	3
(iii) Delay in filing, if can be excused	8 5				
	171,				
(a) Starting point			171		
(b) Time, whether can be extended by virtue of S.		A:	171	N	4
(v) Representation of several persons by one—Death					
person instituting suit—Application by person repr					
sented to continuo suit—Whether one for setting ass					_
abatement (vi) Suit by nearest reversioner to set aside alienation		A.	171	N:	2
widow—Death of nearest reversioner pending suit					
Declaration of abatement of sust by Court—Applie					
tion by next reversioner for setting aside abatement					
not governed by Art 171		A 1	171	N	2
(b) Who can set aside abatement			171		
accommodation bill					_
-Acceptor for honour of-Snit by him on the bill-Limitation		A	79	N	1
-Acceptor of Suit against drawer-Limitation-Starting point			79		
- Accommodator of Suit for recovery of sum paid Limitation			79		
——Indorser for accommodation—Suit by—Limitation	A 79				
Meaning of	•••	A	. 79	N.	1

Acco	unts
	Deht

Accounts						
Dehter calling					pay-	
ment_Debte	or, if admite	existence of	unsettled	occounts	•••	8 19 N 1
Domand for	. What amn	unts to dos	nand for	accounts v	rithin	
Articlo 89	•••	•••	•••	•••	•••	A 89 N 13
Mutual account	t					
(a) Meaning	lo				•••	A 85 N 3
(b) Test						A 85 N 3
-Mutual, open a	nd current a	cconnt				
(a) Shifting 1			rist through	mut dealin	rts	A 85 N 13
(b) Suit for 1			21 005.		,,,	
	ount between		ma modifi	mhara A	labtor	
	made casua				10101	A 85 N 10
	ount consist				- and	11.00
	ncy on the r				g Auu	A 85 N 5
	ount consist					•
po bl	ayments of r	itico on rito	ntner-111	nitation ab	biren.	A 85 N 6
						1100
	ount where	each party	ecits goods	to the or	ner—	A 85 N 7
						12 00 1
	ount where				twing	A 85 N 4
(_1) A	lvances of sa	iary—Limit	ation			-
(41) VCC	count where	there are a	avances of	loan on one	a Line	A 85 N 4
(''') A	nd repaymon	ts on the ot	ner—Limit	ation applic	2010 :	
	ount which		ebosits und	i witnuraw		A 85 N 9
	ımitation				400	_
	ount which		ioan by oa	on party to	, 6110	A 85 N 10
	her—Limita					
	ount which					
es	state on one	nde and mni				A 85 N 12
(A O) t	her—Limits			•••		A 85 N 2
(X) Obj	ect of Art. 8 st itom odmi		311	· · · · · · · · · · · · · · · · · · ·		A 85 N 18
		rred at brave	a mart.	20-716anin	6011	
(xii) Lin						A 85 N 2
	(a) English I (b) Indian La		•••	•••	•••	A 95 N 2
	c) Starting p		•••	•••		A 05 N 17
	d) Section 2		17.	•••		A 85 N 17
				of lean on	070	
(IIIX) Suit	where accou	int consists o	of advances	or toan ou	tion	
	de and sale		o tuo nene	r — 11111110	11101	A 85 N 8
(c) Whethor	plicablo			titata ma	tool.	
	eacn party n nd current a			narithte mn		A 85 N 15
				the m	Foire	
(d) Whether			same throu		;110a	A 85 N 15
of acco		···	•••	•••	•••	A 85 N 14
Open and curre	ent account-	-Meaning of	•••	***	•••	
Principal and	agent—Age	nt whather	bound to	render pr	oher	A 89 N 21
accounts	****		··· .			
Refusal to give					thin	A 89 N 13
Article 89	• •	•••	•-•	•••	•••	-
Suit for		 .		J	iaht	
	of profits ma				PHI	A 40 N 1
or exclu	sive privilege	_Limitotio	n	•••	•••	

Accour	its—Snit for—(Gontd.)	
	(b) Admission of existence of unsettled accounts - Accounts	
	submitted to arhitrators for settlement - Admission, if	
	saves limitation for suit notwithstanding failure of arbitra-	
	tion proceedings	S 19 N 19
1,00	(c) Against executor—Limitation	A 120 N 4
٠.	(d) Against executor — Whether executor liable to render	A 120 H 9
	accounts for period of twelve years previous to suit, in euit	
, ·	by residuary legatee for recovery of his share granted under	
	the will	A 123 N 7
- 1		88, A 88 N 1
`	(f) Against trustee where he is liable to account in equity for	
	a particular fund—Limitation—Starting point	A 120 N 4
	(g) Based upon registered contract of agency-Snit, whether one	11 120 11 1
	for compensation for breach of registered contract	A 116 N 12
	(b) By legal representative of deceased principal against agent	7 110 11 12
	for accounts due to deceased principal	A 89 N 11
	(i) By principal against agent	11 00 11 11
	(1) Agency, how terminated A 8	9 N 14 to 19
	(ii) Burden of proof	A 89 N 20
	(ni) Limitation—Starting point A 89 N 5; A 89 N 1	2. A 89 N 18
	(17) Nature of relief	A 89 N 5
	(v) On ground of breach of contract of agency-Suit,	
8 1 1 3	whether governed by residuary Art. 115	A 115 N 1
•	(vi) On registered agreement to account—Limitation appli.	
	cable	A 89 N 4
4	(vii) What constitutes demand and refusal of accounts	
	within Art. 89—Illustrative cases	A 89 N 13
•	(1) By principal against legal representative of deceased agent	
		1, A 89 N 10
,	(k) By proprietor for account of profits against lambardar based	L 100 17:3
	on implied contract—Limitation	A 120 N 2
	(1) Cause of action—When arises	A 120 N 15
1	(m) Decree in favour of defendant, if may be passed	83N14
	(n) Discharge-Manager of joint Hindu family-Capacity of,	C # 37 - 4
	to give	S 7 N 16
	(o) Essentials of such suit	A 120 N 15
1	(p) Hindu family—Partition of Hindu family—Portion of estate	
5	left in management of one member - Suit against such	1 00 17 0
'	member—Suit for accounts by other members—Limitation.	A 89 N 8 A 120 N 15
:	(q) Limitation—Illustrative cases governed by Art. 120	A 120 N 10
41	(r) Limitation applicable — Whether same as applicable for	A 62 N 4
	money had and received	A 02 N 4
	(s) Partnership accounts — Partnership deed registered—Whe- ther suit is one for compensation for breach of registered	
L ii	contract	A 116 N 11
	(t) Suit for accounts and share of profits of dissolved partnership	21 110 11 11
2	(i) Between partner and sub-partner—Limitation appli-	
e	cable	A 106 N 8
V2.3	(ii) Burden of proof	A 106 N 14
	(iii) By assignce or successor in interest of a partner -	
4365		A 106 N 10

(a) Fact that thorn are unrealized assets outstanding at the date of dissolution and date of suit whe.

partnership-(Contd.) (iv) Limitation

office-Limitatioo

	at the date of dis				
	thor alters charac	tor of suit a	s one for acc	ounts:	
	(b) Starting point	•••	•••	•••	A 106 N 13
	(v) Meaning of	•••		•	A 106 N 5
	(vi) Partnership dissolved o	n death of	a partner -	- Suit	
	against hoir of decease				
	him as member of parts			•••	A 106 N 11
	(vii) Second partnership after			- Buit	
	for account of second p				
	partnership, if can be		- 110000000	,	A 106 N 9
	viii) Settlement after dissoluti		or pormissibl	A DVOR	
,	after expiry of limitation				A 106 N 6
	(ix) Suit for accounts of family			•••	A 106 N 3
	(x) Suit for accounts where tored—Limitation	deod of Par	rostanih ia	109134	A 105 N 13
					11 200
	(xi) Suit for declaration that				
	porty attached in exce of the partners as sololy	ution of a	to bloo Wi	hother	
	suit for accounts and sh	y indiduging	of diesolved	I mart.	
	porshin	aro or prour	9 01 (113301130	. Just or	A 106 N 5
	(xii) Suit for recovery of mor	or found d	wa ta wlaint	iff by	
	dolendant by prior jud	emont before	on parting i	n suit	
	for accounts of dissolved	l nortnorshi	T.imitatio	n	A 106 N 5
	(xiii) Suit for reliof arising or				
	Whother suit for accoun	ufossifi lo et	cel partnersh	in	A 106 N 4
	(xiv) Suit for share in specific				
	ner after dissolution-L		orion by one		A 106 N 7
	(xv) Suit if time-barred, w		anbacquent	suit	
	for relief unclaimable	without fied	ings as to ac	count	0 N K
	and share of dissolved p	artnership		•••	A 106 N 5
	(xvi) Suit in respect of matter	which is no	ot and has no	ot he-	
	come item of partnersh	ip account -	- Whether 1	nain-	
	tainable without prayer	for adjustm	eot of accou	ats—	A 106 N 5
	Illustrative cases			ment	
	(xvii) Suit to recover amount reached between partno			шын	A 106 N 6
	(xviii) Time, whether can be ex	tandad bu s	polication of	Sec-	
	tions 4 to 25	bould by a	pprication of	•••	A 106 N 13
	(xix) What is - Test			•••	A 106 N 2
	(xx) Whether form or substance	ce of suit is r	natorial for a	.ppli-	A 106 N 2
	cability of Art. 106		•••	• • •	A 116 N 1
(n)	Suit for accounts and suit for	compensation	on distinguis	shed:	H 110 2
(v)	Suit for accounts of moveah	de property	left in mar	iage-	
	ment of one member after	disruption (ol joint stati	IR OI	A 127 N 6
(w)	joint Hindu family—Limitat Suit for accounts without pray	on sphical	ution of nart	ner-	
(,	phin Timitation	et for dissor	unon or part	•••	A 120 N 27

(x) Suit for direction defendants to produce their accounts of

•••

•••

A 124 N 5

...

•••

Accounts—Suit for—(Contd.)	
(y) Suit for money under agreement — Subsequent suit for the	
same sum as on settlement of accounts—Whether on same	
cause of action for purposes of S. 14	S 14 N 18
(z) Suit seeking to make trustee liable to account for property that came into his hands and to make good such portion as	
is not duly accounted for—Whether within S. 10	S 10 N 23
(z1) Snit to enforce lightly of trustee in respect of property	D 10 IV 23
which never came into his hands-Whether within S. 10	S 10 N 23
Suit on	
(a) Adjusted accounts of partnership which entitles plaintiff to	
eue hy virtne of adjustment-Limitation	A 115 N 3
(h) Oral adjustment—Limitation	A 120 N 15
(c) Suit for recovery of sums due on accounts after a hill which defendant has sent to plaintiff in settlement of accounts is	
defendant has sent to plaintift in settlement of accounts is dishonoured on presentment for acceptance—Limitation	A 78 N 3
·	A IBN 3
Accounts stated	
In respect of registered contract of deht — Suit upon original contract within six years thereof but beyond three years of	
statement of accounts—Whether barred	A 64 N 5
	A 64 N 2
-Promise implied in-Whether constitutes express promise within	
Contract Act, S. 25, sub.s. 3	A 64 N 3
— Statement of account, whether extinguishes nriginal rights	A 64 N 6
Suit npon	
(a) Accounts stated not signed by defendant or his agent —	A 64 N 10
(h) Adjustment of accounts if not signed by defendant, whether	V 04 I/ 10
furnishes cause of action	A 64 N 8
(c) Between principal and agent	A 64 N 7
(d) Limitation (i) Art. 85 and Art. 64 distinguished	A 64 N 4
(i) Art. 55 and Art. 64 distinguished	A 64 N 9
What is	21 01 21 3
(a) Account which merely consists of advances of amount on	
one side and repayments towards such advances on the	
other, whether accounts stated (b) Acknowledgment under S 19, whether accounts stated A 64 1	A 64 N 2
(c) Mere halancing of account, whether accounts stated	A 64 N 2
	A 64 N 5
Acknnwledgment	
-After dissolution of partnership by partner anthorized to wind up	
husiness-Whether hinding on other partners	S 21 N 13
- Against whom operates-Person jointly liable with person making	
acknowledgment—Whether bound	S 21 N 6
cular acknowledgment in question	S 21 N 6
-Authorization of a member of any of the groups mentioned in	5 21 11 0
S. 21 to acknowledge on hehalf of others may be express or	
implied and may be general of special	S 21 N 6
By agent (a) "Agent duly authorized in this behalf" in S. 19—Meaning of.	S 21
(a) Agent dut) authorized in this benan in b. 15-blezhing of.	
	Lim. 167

2008 GENERAL INDEX	
Acknowledgment-By agent-(Contd.)	, ,
(b) Agent of Hindu widow neknowledging liability - Wheth	er
valid as against reversioner succeeding to such liability	5 21
(c) Persons who can be considered as agents for the purpose	of
S. 19	S 21 N 6
-By co. mortgagee	_
(a) Mero fact that persons stand to each other in the relation	
co-mortgagoes—Whether makes them agents for each oth	er S 21 N 16
for purpose of making acknowledgments	
(b) Mortgagee right partitioned and each mortgagee in separa	
possession of a portinu of mortgaged property—Acknow ledgment by one of thom—Whether can be used in suit f	or
redemption of particular share in his enjoyment	S 21 N 16
(c) Whether effective to sustain suit for redemption of such c	S 21 N 16
mortgageo a sharo in mortgage (d) Whether operates against other co-mortgagees for purpos	AD
of limitation	S 21 N 16
-By Court of Wards-Authority to acknowledge is etatutory an	id
	S21 N5
—By guardian	
(a) Acknowledgment by de facto guardian of minor who is no	ot g21 N 8
his legal guardian—Whether binding on minor under 5, 21	S 21 N 3
	" agt N S
	" a 01 N S
(e) Of instine person—Before he is so appointed one is not the	
	S 21 N 3
ing to	
minor's benefit	S 21 N 19
	8311/2
-By junior member of Hindu joint family-Whether binds other	s 21 N 20
members of the family	5 22 21 21
-By manager of Hindu joint family	
(a) After partition - Creditor having no notice of partition -	S 21 N 20
Acknowledgment, if binds other members of family	
(b) Family joint when liability was incurred—Acknowledgmen by alleged manager after family divided—Acknowledgment	
if binding on other members of family	5 21 N 20
(c) In his individual capacity - Whether binding on other	S 21 N 20
members of the family	
(d) It should be joint family liability in order to bind the other	S 21 N 20
members of the family	
(e) Liability incurred by members of family in their individua	
capacity—Manager, if can acknowledge liability on beball of other members of the family	S 21 N 20
(f) Liability incurred by or on beball of Hindu undivided family	,
—Acknowledgment by manager or bis agent—Whether can	1 821
be deemed to have been made no behalf of whole rainly	
(g) Mention of debt in schedule of debts filed by manager in the	
course of proceedings for his being adjudicated insolvent-	S 21 N 20
Admission, if hinding nn family (h) Whother saves limitation in regard to liabilities hinding on	
family	S21 X

•:•

S 4 N.8

...

Acknowledgment—(Contd.)	
	C 01 N 9
the second of the second of the second	S 21 N 3
Head of Muhammadan familyWhother can make acknowledg-	
ment on behalf of the family	S 21 N 22
Ineffective for purposes of Art. 183-Fresh period of limitation, if	
will run from date of acknowledgment	S 20 N 37
- In favour of original creditor's legal representative-Legal repre-	
sontativo minor—Effect	S 6 N 14
- In respect of cause of action-Day of acknowledgment to be	
excluded in computing period of limitation	S 12 N 3
- Joint contractors-More fact that certain persons are related to	
each other as joint contractors—Whether by itself makes them	
	S 21 N 7
agents of each other for making acknowledgment	
Joint mortgagees	
(a) Acknowledgment by joint mortgagees—Whether saves limita-	S 21 N 16
tion for suit for redomption by mortgagor	0 41 11 10
(b) Doath of one of two co-mortgagees—Entire mortgagee right	
becoming vested in the other-Acknowledgment by him	
after the other's death-Whether sufficient to keep alive	S 21 N 16
right of redemption	2 31 11 10
(c) One of soveral mortgagees, if can be doemed to he acting as	S 21 N 16
agent of the others for purpose of acknowledgment	2 51 W 10
- Made after period fixed in Schodule but before expiry of period	
oxtended on ground of disability-Whother furnishes fresh	0.035.43
starting point of limitation	86 N 41
Meaning of	S 19 N 18
More porsons than one jointly liable-Acknowledgment by one will	^
not hind the others	S 21 N 6
is a thing dono in the usual course of the business—Authoriza-	
tion to one partner by other partners to acknowledge may be	
	S 21 N 13
of habitity to any of and habitations whether	
—Of hability to pay arrears of rent — Acknowledgment, whether oxtends period of limitation for suit for arrears of rent	A 110 N 13
Person making acknowledgment baving authority, of other mem-	
hers of the group to which he belongs, to make acknowledg-	S 21 N 6
ment—Acknowledgment binds other members also	
Persons who can keep alive right which is not time barred, by	S 21 N 2
acknowledgment	
Promise implied in-Whether constitutes express promise within	A 64 N 3
Contract Act, S. 25, snb-s. 3	
-Requirements of Art. 183 satisfied but not those of S. 19-Date of	S 20 N 37
acknowledgment will be starting point under Art. 183	S 21 N b
- Section 21 is not an exception to S. 19 but an explanation to it	S 20 N 37
Should be made to person sutitled under Art, 183	
-To pay time barred rents-Suit on basis of such acknowledgment	110 N 12
-Whether maintainable	4 61 N 3
—Whether maintainable —Under S. 19—Whether accounts stated within Art. 64 : A 64 N 2	S 29 N 2
Validity of, when made after the prescribed period	D 23 IV 2
I	

Acknowledgment and payment _____Distinction between S. 19 and S. 20 and Art. 183 ...

... S 20 N 37.

GENERAL INDEX	2661
Acknowledgment of liability	
-Acknowledgment and fresh contract—Distinction between	S 19 N 8
-Acknowledgment by administrator	D IO IO
(a) Administrator, if can bind estate by acknowledgment made	
by him in respect of deht due by estate	S 19 N 55
(h) Letters of administration granted to heir of deceased—	
Acknowledgment by beir made before grant of letters—	C 10 M FF
	S 19 N 55
(a) Acknowledgment necessarily implies that agent acknowledges	
liability of principal in favour of third party	S 19 N 50
(b) Agent authorized to affix principal's signature on his hehalf	
	S 19 N 50
(c) ·	S 19 N 50
(a) •	0 -0 -1 00
acknowledge debt due by principal	S 19 N 50
(e) Authority confined to dealings with lands - Agent, if em-	
powered to acknowledge hability for personal debt not charged on lands	S 19 N 50
(f) Anthority of agent may be express or implied and may be	5 15 11 00
presumed from attendant circumstances	S 19 N 50
(g) Authority of agent may be the outcome of an order of Court	
or arise as a matter of law	S 19 N 50
(h) Authority of agent to make acknowledgment on behalf of	
another may be special nr general	S 19 N 50
(i) Authority to borrow implies anthority to acknowledge debts.	S 19 N 50
(j) Authority to buy goods and pay for them — Whether implies authority to acknowledge liability for price of goods bought.	S 19 N 50
(k) Anthority to settle and pay claims—Whether includes autho-	5 10 11 00
rity to acknowledge such claims	S 19 N 50
(I) Burden of proof that person acknowledging was duly autho-	
rized to do so is on plaintiff	S 19 N 50
(m) Business of firm carried on by gumastha who generally managed all its affairs—Gnmastha always allowed to write	
letters on behalf of firm which were never repudiated—	
Gumastha, if could acknowledge dehts on behalf of firm	S 19 N 50
(n) Court of Wards in charge of estate of a ward — Whether an	
agent authorized under the statute to make acknowledg-	F 10 17 20
ments on hehalf of ward (o) Executor's authority to give acknowledgment on hehalf of	S 19 N 50
estate is based on his position under the law	S 19 N 50
(p) Letter acknowledging debt on behalf of another written at	20 20 00
the request of the latter - Acknowledgment is made by	
agent specially authorized in this behalf	S 19 N 50
(q) Mere fact that agent used to write letters on hehalf of principal — Court, if can infer that he was authorized to make	
acknowledgment of liability nn behalf of principal	S 19 N 50
(r) Question whether there is authority to acknowledge depends	- 20 21 00
on facts and circumstances of case	S 19 N 50
(s) Receiver authorized by Conrt in acknowledge debts-Autho-	
rity is derived from order of the Court	S 19 N 50

Acknowledgment of liability—(Contd.)

Acknowledgment by Court

(a) Judgment purporting to record admission made by or on behalf of a party — Judgment, if can operate as acknowledge.

ment of liability S 19 N 57 (b) Statement in judgment of Court that certain person was mortgagee - Whether can be used as acknowledgment of liability sgainst him ... S 19 N 57 -Acknowledgment by Coprt of Wards - Whether saves limitation S 19 N 57 under S. 19 S 19 N 56 • • • S 19 N 69 --- Acknowledgment by minor-Whether available against him ... --- Acknowledgment by Official Assignce (a) Suit against debtor after termination of insolvency-Previous acknowledgment by Official Assignee - Whether can be S 19 N 53 relied on as saving limitation (b) Suit against Official Assignee of insolvent to enforce mortgage executed by insolvent.—Acknowledgment by Official Assignee S 19 N 53 may be relied on as saving limitation -Acknowledgment by one of several co.judgment debtors-Whether S 19 N 54 eaves limitation against others -Acknowledgment by pleader (n) Admission by pleader in the course of his duties on behalf of his client - Whether binds client as acknowledgment of S 19 N 51 liability .. (b) Admission by vakil in course of letter by him on behalf of S 19 N 51 cliont-Whother binds client (c) Petition by vakil eigned by him praying for additional time for payment of amount due under decree passed against S 19 N 51 client - Whether ncknowledgment of liability under 8. 19: —Acknowledgment by Receiver (a) Receiver, if can make acknowledgment on behalf of party of S 19 N 52 whose property he is receiver (b) Receiver of assets of firm with power to pay debts due by S 19 N 59 firm-Whether can give acknowledgment in respect of debts. (c) Sutt for dissolution of firm-Receivor appointed for collecting outstandings and doing all things necessary for preservation of estate - Receiver, if can acknowledge liability for debt S 19 N 59 due by firm Acknowledgment contained in document 30 years old (a) Document purporting to be signed by agent on behalf of S 19 N 68 principal - Presumption, if arises as to agent's authority : (b) Presumption as to-Whether presumption applies where copy S 19 N 68 is produced as secondary evidence (o) Signature of executant purporting to have been written by another person under the former's authority-Presumption that person affixing signature of executant had his authority S 19 N 69 to do so-Whether arises ---- Acknowledgment contained in letter marked "without prejudice" S 19 N 66 -Admissibility of - Acknowledgment does not confer right or title on person whose S 19 N 7 right is acknowledged -Acknowledgment, if must be signed by person making acknowledg-S 19 N 5 ment

S 19 N 14

Acknowledgment of liability - (Contd.)

•	
can be compelled by Conrt to prove acknowledgment of	
liability by applicant	S 19 N 70
(b) Whether can be compelled to be produced in Court to prove	C 10 N 70
acknowledgment	S 19 N 70 S 19 N 2
Acknowledgment made under prior enactment Test of sufficiency:	5 19 N 2
which suit instituted—Right of snit is not revived	S 19 N 2
-Acknowledgment obtained by threat or intimidation - Whether	
can be used under S. 19	S 19 N 69
Acknowledgment of debt inadmissible for want of stamp In.	
admissibility does not preclude debt acknowledged from being	
proved by parol evidence	S 19 N 74
—Acknowledgment of debt which otherwise falls within provisions of Art. 1, Sch. 1, Stamp Act—Acknowledgment if not duly stamped	
oannot be relied on	S 19 N 74
-Acknowledgment under circumstances that would vitlate contract	222.12
-Effect of	S 19 N 69
Acknowledgment, when to be made	
(a) Acknowledgment must be made before expury of period of	
limitation prescribed for suit or application	S 19 N 12
(b) Period prescribed—Meaning of	
(i) Acknowledgment made before expiry of period of limi- tation as extended by S 14—Sufficiency of	S 19 N 12
(ii) Acknowledgment made during additional period con-	5 19 N 12
ferred by S 19—Sufficiency of	S 19 N 12
(111) Acknowledgment made during the period of two years	
conferred by the now repealed S. 31-Whether within	~
S. 19 (iv) Acknowledgment made under prior Act — Period pres.	S 19 N 12
cribed refers to period prescribed by Act in force at	
the time of institution of suit	S 19 N 13
(v) Extra period to which a person is entitled under S. 6	
of the Act—Whether period prescribed within S 19 (vi) Extra time which a litigant gets under S 4—Whether	S 19 N 12
part of period prescribed within S 19	S 19 N 12
(vii) Period got after deducting a certain time under S. 52,	D 10 11 12
U P Court of Wards Act — Whether period pres-	
cribed within S. 19	S 19 N 12
(viii) Period in computing which time is deducted under S 78, sub-s 2, Provincial Insolvency Act — Whether	
period prescribed within S. 19	S 19 N 12
(ix) Period of 12 years under S. 48, Civil Procedure Code	
-Whether period prescribed within S 19	S 19 N 15
(v) David processed by ground or local law. Whather	

Acknowledgment of liability—By whom to he made—(Contd.)	
(d) Person making acknowledgment—Whether must have had	
interest in property in respect of which acknowledgment is	
given, at the time when it was made	S 19 N 33
(e) "Person through whom he dervies title or liability" -	
Meaning of	S 19 N 34
(f) Statement by person made at time when he was not in any	
way liable in regard to matter alleged to be acknowledged— Whether can be used against him as acknowledgment when	
he subsequently becomes liable in regard to it	S 19 N 25
	0 10 11 20
(a) Admission by person of existence of open and unsettled	
accounts between himself and another—Effect of	S 19 N 19
(b) Admission of liability compled with condition that liability is	D 13 H 13
found by arbitrators to exist—Sufficiency of, for purposes	
of S, 19	S 19 N 19
(c) Admission qualified by condition which is fulfilled—S. 19, if	
applies	S 19 N 19
(d) Cosbarer in exclusive possession calling upon other co-sharer	
to pay up his share of expenses incurred for repair-	
Acknowledgment of other e right implied in letter — Who-	S 19 N 19
(e) Statement by debtor that he is willing to pay on hearing from	9 19 W 19
creditor full details of dnes— Whether amounts to condi-	
tional acknowledgment	S 19 N 19
Conditions for applicability of S. 19	S 19
-Date of acknowledgment	W 20
(a) Admissibility of evidence to prove that date given in writing	
ie a mistake	S 19 N 88
(h) Admissibility of oral evidence as to date	8 19 N 38
(c) Date ecored out-Oral evidence, if can be given of date of	••
document	S 19 N 38
(d) Whether should be mentioned in writing containing acknow.	
ledgment (e) Writing containing acknowledgment undated—Oral evidence	S 19 N 38
may be given of the time when it was signed	S 19 N 38
Distinction hetween S. 19. Limitation Act, and S. 25, Clause 3,	D 19 IV 39
Contract Act	S 19 N 9
Distinction hetween Ss. 19 and 20	S 19 N 5
Document containing acknowledgment	0 20 11 0
(a) Construction of—Sprrounding circumstances, if can be taken	
into consideration	S 19 N 18
into consideration (h) Document alleged to contain acknowledgment—Evidence	
nto consideration (h) Document alleged to contain acknowledgment—Evidence of external circumstances, if can be taken into consideration.	S 19 N 18 S 19 N 32
into consideration (h) Document alleged to contain asknowledgment — Evidence of external circumstances, if can be taken into consideration. (c) Fact that document is not intended to be acted upon—Whe-	S 19 N 32
into consideration (h) Document alleged to contain acknowledgment—Evidence of external circumstances, if can be taken into consideration. (c) Fact that document is not intended to be acted upon—Whether invalidates acknowledgment	
into consideration (h) Document alleged to contain asknowledgment — Evidence of external circumstances, if can be taken into consideration. (c) Fact that document is not intended to be acted upon—Whe-	S 19 N 32 S 19 N 18
into consideration (h) Document alleged to contain acknowledgment — Evidence of external circumstances, if can be taken into consideration. (c) Fact that document is not intended to be acted upon—Whether invalidates acknowledgment —Document containing admission by author of subsisting liability—	S 19 N 32
into consideration (h) Document alleged to contain acknowledgment — Evidence of external circumstances, if can be taken into consideration. (c) Fact that document is not intended to be acted upon—Whether invalidates acknowledgment —Document containing admission by author of subsisting liability—	S 19 N 32 S 19 N 18
into consideration (h) Document alleged to contain acknowledgment— Evidence of external circumstances, if can be taken into consideration. (c) Fact that document is not intended to be acted upon—Whether invalidates acknowledgment —Document containing admission by author of subsisting liability— 8.19	S 19 N 32 S 19 N 18
into consideration (h) Document alleged to contain acknowledgment — Evidence of external circumstances, if can be taken into consideration. (c) Fact that document is not intended to be acted upon—Whether invalidates acknowledgment —Document containing admission by author of subsisting liability— 8. 19 —Document not containing admission of subsisting liability — Whe.	S 19 N 32 S 19 N 18 S 19 N 18 S 19 N 18
into consideration (h) Document alleged to contain acknowledgment— Evidence of external circumstances, if can be taken into consideration. (c) Fact that document is not intended to be acted upon—Whether invalidates acknowledgment —Document containing admission by author of subsisting liability— 8.19	S 19 N 32 S 19 N 18 S 19 N 18
into consideration (h) Document alleged to contain acknowledgment — Evidence of external circumstances, if can be taken into consideration. (c) Fact that document is not intended to be acted upon—Whether invalidates acknowledgment —Document containing admission by author of subsisting liability— 8. 19 —Document not containing admission of subsisting liability — Whe.	S 19 N 32 S 19 N 18 S 19 N 18 S 19 N 18

S 19 N 23

S 19 N 27

(a) Acknowledgment made only with reference to portion of claim made by plaintiff -Whether can save limitation with

rogard to entire claim of plaintiff (b) Acknowledgment of anything includes acknowledgment of

(c) Acknowledgment of liability in respect of premissory note-

Acknowledgment of liability-(Contd.) -Effect of

its legal consequences

rogard to entire claim of plaintiff

Intention to give pramissory note in conditional terms of	
original debt — Acknowledgment, if can be relied on in suit for original debt	S 19 N 29
(d) Acknowledgmont of liability in respect of promissory note-	
Whether available in respect of original cause of action	S 19 N 29
(e) Admission of mortgage - Whother amounts to admission of	
mortgagee's right to possession of mortgaged property under	- 10 N 07
terms of mortgage	S 19 N 27 S 19 N 3
(f) Dato from which fresh period of limitation is allowed	2 19 11 9
(g) One person liable to contribute to another for joint debt	
which latter has disobarged—Admission that dobt is a joint	
dobt - Whether sufficient acknowledgment with reference	S 19 N 27
to suit for contribution by other against him	D 10
-Endorsement of payment, it should imply acknowledgment of	S 19 N 5
liability	
-Endorsement of payment towards debt due on promissory note-	
No payment actually made - Endorsement, if amounts to	S 19 N 5
acknowledgment of liability	S 19 N 8
-English Law-Distinction from Indian Law	•
-Entry in settlement record etc., that a property is under a mort-	
gage - Record not signed by party sought to be bound or bis	
agent but only by nilicor — Whether can be used against party as acknowledgment of liability	S 19 N 49
Entry in settlement record etc., that certain property is under a	
mortgage — Record signed by parties concerned—Document can	10
be used as acknowledgment of liability in respect of mortgage:	S 19 N 49
—Essentials of	S 19 N 18
(a) Acknowledgment accompanied by statement that it is not to	
be enforced in a particular manner—Sufficiency of, for pur-	S 19 N 18
poses of S. 19	
(b) Acknowledgment coupled with averment that time for pay-	S 19 N 43
ment etc., has not yet come.—Sufficiency of	
(c) Acknowledgment coupled with proposal for its discharge in a	S 19 N 18
particular mannor—Snfliciency of (d) Acknowledgment most be definite	S 19 N 18
(e) Acknowledgment must be in respect of the particular pro-	S 19 N 26
perty or right claimed in the suit or application	S 19 N 30
(f) Acknowledgment must be in writing	
(g) Acknowledgment must be made before expiry of period of	S 19 N 9
limitation to furnish fresh etarting point	S 19 N 20
(h) Acknowledgment must be of a subsisting liability	
(i) Acknowledgment must be signed by person making acknowledgment or his agent	S 19 N 31
(1) Acknowledgment need not be in respect of the particular	S 19 N 26
relief claimed in the suit	2 12 7. 2.

Acknowledgment of liability-Essentials of-(Contd.) (k) Acknowledgment need not specify the exact nature of the property or right S 19 N 26 (1) Acknowledgment of deht need not specify any precise sum as S 19 N 26 (m) Conscious acknowledgment of liability is necessary S 19 N 18 (n) Court of Wards in charge of estate giving notice to creditor informing that deht was due to him and requiring him to S 19 N 18 (o) Debtor pledging with creditor sbares in a company to secure old loan-Pledge not recorded in writing-Whether sufficient to save limitation under S. 19 S 19 N 30 (p) Decree partly in favour of plaintiff and partly in favour of defendant-Plaintiff merely applying for execution of that portion of decree in his favour - Whether acknowledges liability in favour of defendant S 19 N 18 (q) Document containing acknowledgment ambiguous - Document, if sufficient for purposes of S. 19 S 19 N 18 (r) Documents containing admission of liability must also indicate that such admission is in respect of right sued on S 19 N 26 (a) Document must contain within itself admission of subsisting liability ... S 19 N 32 - (t) Judgment debtor stating that amount due under decree remains unnaid but time for payment has not yet come-Statement is sufficient acknowledgment of liability under S 19 N 43 (u) Letter from debtor admitting correctness of accounts sent by creditor and requesting time for payment-Whether constitutes acknowledgment of liability S 19 N 18 (v) Letter written by executor to plaintiff that his claim against estate was registered and that due notice would be given to him when assets were to be distributed-Letter, if acknow. ledgment of liability ... S 19 N 18 (w) Liability admitted must be one to the plaintiff or some one through whom he claims S 19 N 46 (x) Mere admission of title of plaintiff without in any way implying that there is any liability on defendant's part-Sufficiency of, for S 19 S 19 N 18 (y) Mere payment of money towards debt - Whether sufficient under S 19 though payment may be intended as acknowledgment of the debt ... S 19 N 30 (z) Purpose for which statement enstaining acknowledgment was made is immaterial S 19 N 18 (z1) Right indicated in document containing admission in such a way that with the help of external evidence it can be identified with right claimed in suit-Sufficiency of S 19 N 26 (z2) Several debts due by defendant to plaintiff - Defendant acknowledging liability in respect of a deht-Identification of debt acknowledged with the one claimed in suit not possible-Acknowledgment, if sufficient for S 19 S 19 N 26

____E

GENERAL INDEX

(i) Admission of liability contained in plan filed with plaint — Plan when not signed by plaintiff cannot be used as acknowledgment under S. 19 ...

(ii) Affixing of one's seal to acknowledgment - Whether

(iv) Form of signature is immaterial so long as it verifies

(v) Full signature is not necessary-Initials, safficiency of:

equivalent to signing the document ...

(iii) Entries in account book which are not signed by defendant—Whether sufficient for purpose of S. 19:

S 19 N 31

S 19 N 31

S 19 N 31

S 19 N 31

S 19 N 31

Acknowledgment of liability—Essentials of—(Contd.) (2) Signature

the acknowledgment

(v) rull signature is not necessary—initials, sainciency of	D 10 2. 4-
(vi) Mere writing containing admission of liability in respect of right claimed—Sufficiency of, under S. 19	S 19 N 5
(vii) Mortgagor signing entries in account book of mortgagee	
-Mortgageo also signing entries as scribe Mort-	
gagee, if thereby acknowledges any liability on his	S 19 N 31
part	D 20 2. 4-
(viii) One person anthorizing another to sign his name on his behalf—Signature, if can be deemed to be that of the	
· principal	S 19 N 31
(ix) One person executing a document but another eigaing	
it as scribe-Document cannot operate as acknowledge	S 19 N 31
ment by the latter	2 19 M nz
(x) Person making acknowledgment unable to write his name—Mark or thumb impression—Sufficiency of	s 19 N 31
(xi) Signature need not appear in any particular part of the	S 19 N 31
document	
(xii) Telegram, if constitutes sufficient acknowledgment under S. 19	5 19 N 31
(xiii) Words or letters by which a person usually authenti-	0 37 91
cates documents as being his own-Sufficiency of	S 19 N 31
(z4) Statement that liability originally existed but has since heen	
discharged-Whether acknowledgment of liability within	S 19 N 20
8. 19 for	D 2-
(z ^b) Suit by consignor of goods against Railway Company for compensation for non-delivery of goods—Letter written by	
Railway Company informing consignor that goods are lying	
at a particular place and that consignor's instructions are	S 19 N 18
awaited — Whether serves as an acknowledgment of lianinty:	8 15 11
(z ^b) Suit for compensation for land compulsorily acquired by	
Government—Letter of Commissioner of Revenue to Dis-	
trict Magistrate expressing willingness to recommend to Government to pay for the land—Whether amounts to	- a a T 1 R
acknowledgment of liability	S 19 N 16
(z ⁷) Test to see if words amount to acknowledgment of liability:	S 19 N 18
Svidence	
(a) Admissibility of	B 19 N 39
73 77, 77	D
•	n at 99
***	S 19 N 32
e in regard to question	S 19 N 32
whether document contains admission of liability	D 20-

Acknowledge	ent of liability—I	Exidence—	-Admissibili	ity of _(Cont.	d.)
(i	v) For contradicting				
	document conta				. S 19 N 41
. (v) For showing ho	44 language	e used in a	a document i	5 10 17 00
					S 19 N 32
	•			as t	
	bis intention				C 10 37 00
(mi	ii) Secondary evider	on Hean	o sinon to		
(41	of acknowledgm				
	admissible unde			HOLL C THEOLOGIC	. S19 N 39
(h) Doo	cument admitting t	that the li	ahility exist	s at a certain	1
tin	me—Evidence, if ad	missible to	show that t	he hability du	đ
	ot exist at that time		•••		. S 19 N 41
	dence of facts whi				
(2) 27	d things to which in	nstrument :	refers—Adır	issibility of	. 5 19 N 32
(d) Ex	ecutant of documen	t, containii	ng acknowle	dgment at the	e
83	me time, orally pro- can he proved to	mising to p	ay the deht-	-Oral promise	2
	tween the parties	show that	tuere was a	r iteau confrac	5 19 N 41
	dmissibility of ackn	ostladom an	t of dobt for		
(0) 1110	-Whether precludes	deht ackno	wiedred from	n haing prove	ą Į
			wieugeu izoi	ii noing provo	. S 19 N 74
	erence drawn from		if oral evide	nce	7 10 37 00
	tter containing ackn				
	erson as creditor—A				
- tl	at another person v	ras known	as the perso	n addressed to	0
aı	nd that letter was gi	ven to him			S 19 N 26
(b) Pro	omissory note given	m lieu of e	arlier debt-	-Dehtor giving	S
	eccipt to creditor ac				
m	entioned in promiss	ory note th	he same day	-Evidence to	9
	rove that money re ne time of earlier del			mone2 bang a	t . S19 N 29
	ght acknowledged n hat on date of ackn				
a.	ué from defendant t	o vlaint:ff	-Whether on	n he proved to	
	stablish identity be				
cl	aimed	•••			. S 19 N 26
	rossimorq wear la ac				
ment o	on back of earlier	note that r	n its stead	new note wa	3
	d—Suit on original d—Endorsement, if				
	nitation	can ne rene	ed on as acar	owiengment o	. S 19 N 29
-Express	promise to pay e	xisting del	nt — Whetl	her constitute	8
acknow	ledgment of liability			***	. S 19 N 8
	t acknowledgment l				
	proved except by		of docume	nt itself or by	
	ary evidence of its co				. S 19 N 40
	—S. 19 does not requ			any particula	
	an express acknowl	leagment	•••		. S 19 N 11
	eriod of limitation emputation of—Day	on which	not-nowled-	mant to stone	a
	mputation of—Day hould be omitted	on which	TOP HOW HEAD	ment is signed	
. 5	noppe on numerica	•••	•••		

(c) When commences

-Husband and wife

wife

S 19 N 37 ...

S 19 N 37

S 19 N 63

S 19 N 63

Acknowledgment of liability-Fresh period of limitation-(Contd.) (b) Plaintiff under disability mentioned in Sec. 6 at time of acknowledgment-Whether entitled to benefit of S, 6

(a) Husband, if authorized as such to acknowledge debts due by

(b) Wife, if has authority as such to acknowledge husband's debt

Implied promise, suit on-Whother acknowledgment constitutes a	
new contract	S 19 N 8
Material alteration in document containing acknowledgment after	
it is given-Document, if can be relied on as saving limitation	S 19 X 67
Mere admission that there is a mortgage on one's property-Suffi.	
ciency of, though there is nothing in the statement itself to	
identify the mortgage with suit mortgage	S 19 X 25
- Mortgage : See also under Mortgage	
(a) Acknowledgment of mortgago by mortgagor—Whether hinds	
transferees of equity of redemption claiming under transfers	
made prior to acknowledgment	S 19 N 35
(b) After mortgage to second mortgagee, mortgager stating that	
first mortgage remains undischarged—Acknowledgment, if	
filst motifaco tematis andiscusifed—Wernowtenement a	S 19 N 35
(c) · · · · · · · · · · · · · · · · can operate	
(c) can operate	S 19 X 71
(d)Mortgagor	
afterwards stating that mortgage is undischarged—State-	
	S 19 N 35
ment, if hinding on vendee	
(e) Sale of whole of the property mortgaged—Absence of personal	
liability under mortgage-Mortgagor stating after sale that	S 19 X 35
mortgage is undischarged—Statement, if binding on vendee:	
(f) Subsequent sale of whole of property mortgaged _Mortgagor	
remaining personally liable for mortgage amount - Mortga-	
gor stating during subsistence of personal liability that mort-	S 19 X \$5
gage remains undischarged—Statement, if hinding on vendee:	
-Offer of Collector under S. 16 of Bombay Court of Wards Act-	S 19 N 73
Whether can be used as acknowledgment of liability	D =-
—Past liability	
(a) Admission of past liability unaccompanied by denial of the	
continuance of the liability-Whether admission of sub-	S 19 N 20
sisting liability (b) Statement that liability existed—Whether may in the parti-	
cular context and circumstances imply admission of a	
cular context and circumstances imply admission of "	S 19 N 20
F	
	01
•	S 19 N 34
gage on property after attachment of propertyAuction-	S 19 N 34
purchaser, if bound by acknowledgment	S 19 K 17
(c) Mortgage — Mortgagor granting mortgage with possession to	
stranger —Stranger allowing revenue to fall into arrests—	
Stranger nurchasing property at revenue sale.—Acknowleds.	
ment of liability by mortgagor in respect of first mortgage	S 19 N 34
-Whether binding on stranger	310
- "	

Acknowledgment of liability-(Contd.) Plaint containing definite allegation of acknowledgment as saving limitation-Defendant pleading that suit is harred-Such mere plea is not sufficient to constitute specific denial of the allegation in the plaint S 19 N 77 -Plaint, if can be allowed to be amended by including allegation of acknowledgment of liability S 19 N 77 -Pleading (a) Presumption of har of limitation not arising on face of plaint -Fact that acknowledgment is relied on to save suit from har, if should be stated in plaint ... S 19 N 77 (b) Suit harred on the face of the plaint - Acknowledgment of liability relied on to save bar-Fact that such acknowledgment is relied on must be stated in plaint S 19 N 77 S 19 N 17 S 19 N 16 (c) Suit or application must be one in which any property or S 19 N 16 right is claimed -Pre-emption - Acknowledgment by vendee of mortgage on pro-S 19 N 84 perty-Whether binding on pre-emptor Principle of S. 19 S 19 N 4 -Proceedings to which provisions as to extension of limitation apply: S 19; S 19 N 1 Promise to pay—Whether necessary ingredient of acknowledgment under S. 19 S 19 N S -Promise to pay time barred debt S 19 N 9 -Promise which is merely implied in acknowledgment of liability-Whether promise within S. 25, Cl 3, Contract Act 819N9 Promissory note for pre-existing deht - Whether can he used as acknowledgment of liability in suit on original cause of action S 19 N 64 -Promissory note for pre-existing deht becoming unenforceable as being inadmissible for want of sufficient stamp - Suit on original cause of action - Promissory note, if can be relied on as acknow. ledgment S 19 N 64 Promissory note for pre-existing debt failing as contravening S 26 of the Paper Currency Act - Suit on original cause of action -Promissory note, if can be used as acknowledgment of liability ... S 19 N 64 -Promissory note for pre-existing debt unenforceable under S 28 of S 19 N 64 ment of hability S 19 N 64 Provisions as to-Applicability to execution proceedings S 19 N 63 -Registration (a) Acknowledgment contained in document compulsorily registrable but not registered - Admissibility of, for proving acknowledgment of hability contained in it S 19 N 75 (h) Acknowledgment of hability in respect of right to or in immovable property of value of Rs. 100 or more - Whether a document compulsorily registrable under S 17, Registration Act S 19 N 75 --Requirements of S. 19 S 19

Acknowledgment of liability-(Contd.)

— Section 19 applies to any right or property

— Set-off

coupled with claim of set-off

. .

S 19 K 5

5 19 5 45

S 19 N 45

coupled with claim of set-un	
(c) Defendant denying that he owes anything but claiming plain-	
tiff owes him money - Admission that latter is entitled to	
the owes him inoney - Admission that latter is entired to	
set off a certain amount against his claim - Statement, if	
amonnts to acknowledgment of liability	S 19 N &
Stamp	
(a) Acknowledgment admitted in evidence though not duly	
stamped—Admissibility cannot be questioned subsequently:	S 19 N 14
the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the s	S 19 N 74
(b) Acknowledgment need not be stamped in every case	
Statement that a sum of money will become due on the happening	
of an event future and uncertain. Whether amounts to acknow.	
	S 19 N 43
ledgment of debt	
- Statement that liability existed once but has since been discharged	
-Whether acknowledgment of liability coupled with refusal to	
	S 19 X 44
pay	
- Statement that liability exists - Whether can be used against	
person making it who at the time of making was not liable in	
person making it who at the time of making was not been	S 19 N \$3
regard to matter acknowledged	
-Statement that money claimed is not due but that if it is, it must	
be set off against the amount due from plaintiff - Whether ac-	
be set on against the amount ude from plaintin - the set	S 19 N 45
knowledgment of liability coupled with claim of set off	-
- Statement which if literally construed does not amount to ac-	
knowledgment-Whether sufficient for purposes of S. 19, if it	41
and wiedgment - whether sametent for purposes of 200 -	5 19 N 11
implies admission of liability	_
——To whom to be made	
(a) Astronomical and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second and a second a	
(a) Acknowledgment addressed to some persons — Acknowledg-	
ment, if should be addressed to plaintiff or to any one through	S 19 S 45
whom he claims	2 12 11
(h) Acknowledgment by mortgagee of mortgage and of his liahi-	
(a) healthwisedgment of mortgages of mortgage and of	
lity to be redeemed-Whether may be contained in deed of	
sub-mortgage or other documents executed by him in favour	S 19 N 45
of a third person	S 19 N 45
	S 19.3 =3
(c) Acknowledgment contained in will—Sufficiency of	_
(d) Acknowledgment may be contained in document presented	C 10 N 47
or addressed to Court.	S 10 N 47
(e) Acknowledgment not addressed to person entitled - Suffi-	o × 15
to deallowed men and addressed to person chance	S 19 N 45
ciency of	
(f) Acknowledgment of debt contained in letter to creditor's	S 19 N 45
attorney-Sufficiency of	3 1
(g) Acknowledgment of debt made to creditor's brother - Suffi-	a x 15
(5) Delib wiedgment of debt made to ereditor a brother -	S 19 N 45
ciency of	
(h) Agreement of reference to arbitration containing acknowledg-	S 19 N 46
ment of liability to creditor—Sufficiency of	
	J
(i) Downwart addays and to Count	5
(i) Document addressed to Court	3
(i) Document addressed to Court (i) Acknowledgment of debt by its inclusion in schedule	
 (i) Document addressed to Court (i) Acknowledgment of debt by its inclusion in schedule of creditors filed by insolvent—Sufficiency of, for pur- 	
 (i) Document addressed to Court (i) Acknowledgment of debt by its inclusion in schedule of creditors filed by insolvent—Sufficiency of, for pur- 	S 19 N 47
(i) Document addressed to Court (i) Acknowledgment of debt by its inclusion in schedule	

Gourt—(Contd.) (ii) Admission in written statement—Whether amounts to acknowledgment of liability made in plaint—Whether operates as acknowledgment of the properties as acknowledgment in the statistication of decree—Whether amounts to acknowledgment in the statistication of decree—Whether amounts to acknowledgment of liability under decree (vi) Application by judgment-debtor for entering up part say of sale—Whether amounts to acknowledgment of liability under decree (vi) Application for extension of ting for payment of decreation and of liability under decree (vi) Application for extension of ting for payment of decreation amount—Whether sufficient acknowledgment under decree (vii) Application for extension of ting for payment of decreation admitting his liability—Shiftelency of, as acknowledgment admitting his liability—Shiftelency of, as acknowledgment admitting his liability—Shiftelency of, as acknowledgment in the state were commuted mto fixed more pallowance to be paid from Government Treasury—Mortdagee receiving payments and gring to Government receipts signed by him as mortgage — Receipt, if constitute acknowledgment to be paid from Government Treasury—Mortdagee receiving payments and gring to Government receipts signed by him as mortgage — Receipt, if constitute acknowledgment to save limitation for suit for redemption of mortgage — Shapping the promise to pay the state of the save limitation for suit for redemption of mortgage — Whether necessarily implies promise to pay the save limitation acknowledgment of liability — Shapping payment—Whether implies promise to pay debt — Shapping payment—Whether implies promise to pay debt — Shapping payment—Whether implies promise to pay debt — Shapping payment—Whether implies promise to pay debt — Shapping payment of liability — Shapping payment—Whether implies promise to pay debt — Shapping payment of liability — Shapping payment—Whether implies promise to pay debt — Shapping payment of liability — Shapping payment—Whether implies promise to pay debt — Shapping	Acknowledgment of liability—To whom to be made—Document	addunated t	.=
scknowledgment of liability made in plant — Whether operates as acknowledgment (iv) Admission of Inability made in plant — Whether operates as acknowledgment (iv) Application by pidgment-debtor for entering up part satisfaction of decree — Whether amounts to acknowledgment of liability under decree — Whether amounts to acknowledgment of liability under decree — Whether amounts to acknowledgment of liability under decree — Whether sufficient acknowledgment under decree — (vi) Application for extension of time for payment of decree — (vii) Application for probate — Objection that applicant is debtor to estate of deceased — Reply by applicant admirting bis liability—Sinfficiency of, as acknowledgment admirting bis lability—Sinfficiency of, as acknowledgment admirting bis lability—Sinfficiency of, as acknowledgment admirting bis lability—Sinfficiency of, as acknowledgment and tring to Government receipts agree receiving payments and giving to Government receipts agree receiving payments and giving to Government receipts agree positing payments and giving to Government receipts agreed by him as mortage — Unqualified acknowledgment—Whether implies promise to pay: — Unqualified acknowledgment—Whether implies promise to pay: — Unqualified acknowledgment—Whether implies promise to pay: — Whether necessarily implies promise to pay debt — Whether heddle be addressed to person entitled — Sign 8 is 19 N 5 — Whether chould be addressed to person entitled — Sign 8 is 19 N 5 Acquissition — Acquisition of land by Government (a) Cellector refusing to make award for compensation — Suit against collector for damages—Limitation — Preamble N 6 — Treamble N 6 — Chyologistion — Appeal trom — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal Procedure Code — Provision for — Limitation —	Gourt—(Contd.)		0
(iii) Admission of Inability made in plaint — Whether operates as acknowledgment. (iv) Application by judgment-debtor for entering up part satisfaction of decree—Whether amounts to acknowledgment of liability under decree	(ii) Admission in written statement. Whether amounts t		
operates as acknowledgment (iv) Application by pudgment-debtor for entering up part satisfaction of decree—Whether amounts to acknowledgment of liability under decree (v) Application by judgment-debtor for entering up part satisfaction of decree—Whether amounts to acknowledgment of liability under decree (vi) Application by judgment-debtor for pestponement or stay of sale — Whether amounts to acknowledgment under decree (vi) Application for extension of ting-for payment of decreatial amount — Whether sufficient acknowledgment under decree (vi) Application for probate — Objection that applicant is debtor to estate of deceased — Reply by applicant admitting his hability—Shiffelency of, as acknowledgment admitting his hability—Shiffelency of, as acknowledgment of later were commuted into fixed money allowance to be paid from Government Treasury—Mortgage with possession of rights in land which later were commuted into fixed money allowance to be paid from Government Treasury—Mortgage expression of mortgage — Recepts, if constitute acknowledgments to save limitation for suit for redemption of mortgage — Provision for suit for redemption of mortgage — Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign N & Sign	acknowledgment of liability	. S19 N 4	7
(iv) Application by mdgment-debtor for entering up past satisfaction of decree—Whether amounts to acknowledgment of liability under decree of the state of a state of sake — Whether amounts to acknowledgment or stay of sake — Whether amounts to acknowledgment or stay of sake — Whether amounts to acknowledgment or stay of sake — Whether amounts to acknowledgment or stay of sake — Whether sufficient acknowledgment under decree (vi) Application for extension of time for payment of decretal amount — Whether sufficient acknowledgment under decree (vii) Application for probate — Objection that applicant is debtor to estate of deceased — Reply by applicant admitting his hability—Sinficiency of, as acknowledgment of the sake — Whether sufficient acknowledgment under S. 19 N 47 (k) Mortgage—Nortgages with possession of rights in land which later were commuted into fixed money allowance to be paid from Government Treasury—Mortgage receiving payments and giving to Government receipts signed by him as mortgages— Receipts, if constitute acknowledgment to save limitation for suit for redemption of mortgage — Sign N 8 — Unqualified acknowledgment of liability in respect of a debt— Whether necessarily implies promise to pay debt — Sign N 8 — Whether elocid be addressed to person entitled — Sign N 8 — Sign N 8 — Whether elocid be addressed to person entitled — Sign N 8 — Sign N 8 — Decince of, it can prevail over statutory period of limitation — Freamble N 6 — (b) & distinguished from doctrine of labets — Preamble N 6 — (b) & distinguished from doctrine of limitation — Preamble N 6 — (b) & distinguished from doctrine of limitation — Preamble N 6 — (b) & distinguished from doctrine of limitation — Preamble N 6 — (b) & distinguished from doctrine of limitation — Preamble N 6 — (b) Suit for compensation — Limitation — Acquisition — Acquisition — Acquisition — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal Procedure Code — Provision for — Limitation — Acquisition — Acquisition — Acquisition	operates as acknowledgment		7
ledgment of liability under decree (v) Application by judgment-debtor for pestponement or stay of sale — Whether amounts to acknowledgment of liability under decree (vi) Application for extension of time for payment of decree tal amount — Whether sufficient acknowledgment under decree (vii) Application for probate — Objection that applicant is debtor to estate of deceased — Reply by applicant admitting his lability — Sniffelency of, as acknowledgment under decree — Objection that applicant is debtor to estate of deceased — Reply by applicant admitting his lability — Sniffelency of, as acknowledgment — S19 N 47 (g) Entry in defendant's own book, not communicated to any one else—Whether sufficient scknowledgment under S. 19 (k) Mortgage—Mortgages with possession of rights in land which later were commuted into fixed money allowance to be paid from Government Treasury—Mortgages receiving payments and gring to Government receipts signed by him as mortgage — Receipts, if constitute acknowledgments to save unitation for suit for redemption of mortgage — S19 N 46 —Unconditional acknowledgment—Whether implies promise to pay: —Unconditional acknowledgment—Whether implies promise to pay: —Unquisitified acknowledgment—Whether implies promise to pay: —Whether headly be addressed to person entitled — S19 N 8 —Whether chould be addressed to person entitled — Premble N 5 —Whiting recording payment—When amounts to acknowledgment of liability — S19 N 5 Requisted: —Defence of, it can prevail over statutory period of limitation — Preamble N 6 —(a) As distinguished from the doctrine of lackes — Premble N 6 —(b) As distinguished from doctrine of limitation — Premble N 6 —(b) As distinguished from doctrine of limitation — Premble N 6 —(c) As distinguished from doctrine of limitation — Premble N 6 —(b) As distinguished from doctrine of limitation — Premble N 6 —(c) As distinguished from doctrine of limitation — Premble N 6 —(d) Suit for compensation — Limitation — Appeal under Criminal Procedure Code — Provision for —	(iv) Application by judgment debtor for entering up par	t	•
(v) Application by judgment-debtor for pestponement or stay of sale — Whether amounts to acknowledgment of liability under decree (vi) Application for extension of time for payment of decretal amount — Whether sufficient acknowledgment under decree (vii) Application for probate — Objection that applicant is debtor to estate of deceased — Reply by applicant admirting bis lability—Shiffelency of, as acknowledgment admirting bis lability—Shiffelency of, as acknowledgment in the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same of the same	satisfaction of decree—Whether amounts to acknow		_
stay of sale — Whether amounts to acknowledgment of liability under decree (vi) Application for extension of time for payment of decretal amount — Whether sufficient acknowledgment under decree (vii) Application for probate — Objection that applicant is debtor to estate of deceased — Reply by applicant admitting bis liability—Sniffectery of, as acknowledgment on else—Whether sufficient acknowledgment under S. 19 N 47 (vi) Applicating bis liability—Sniffectery of, as acknowledgment else—Whether sufficient acknowledgment under S. 19 N 46 (vi) Mortgage—Mortgages with possession of rights in land which later were commuted into fixed money allowance to be paid from Government Treasury—Mortgages receiving payments and giving to Government receipts signed by him as mortgage — Receipts, if constitute acknowledgments to save lumitation for suit for redemption of mortgage — S. 19 N 46 (vi) Mortgage—Receipts, if constitute acknowledgments to save whether necessarily implies promise to pay debt — Whether necessarily implies promise to pay debt — Whether hendled saddressed to person entitled — S. 19 N 5 (vi) Mortgage — Receipts, if constitute acknowledgment of liability — S. 19 N 5 (vi) Mortgage — Receipts of the person entitled — S. 19 N 5 (vi) Mortgage — Receipts of the person entitled — S. 19 N 5 (vi) Mortgage — Receipts of the person entitled — S. 19 N 5 (vi) Mortgage — Receipts of the person entitled — Premails N 6 (vi) As distinguished from doctrine of landsets — Premails N 6 (vi) As distinguished from doctrine of landsets — Premails N 6 (vi) As distinguished from doctrine of landsets — Repails N 6 (vi) As distinguished from doctrine of landsets — Receipts N 6 (vi) Sunt for compensation — Limitation — Acquisition — Acquisition — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal	(v) Application by indement debter for postponement of	. S19 N 4:	7
of liability under decree (vi) Application for extension of time for payment of decretal amount — Whether sufficient acknowledgment under decree (vii) Application for probate — Objection that applicant is debtor to estate of deceased — Reply by applicant admirting his liability — Snificiency of, as acknowledgment admirting his lability — Snificiency of, as acknowledgment in the sufficient acknowledgment under S. 19 (k) Mortgage— Mit possession of rights in land which later were commuted into fixed money allowance to be paid from Government Treasury—Mortgage expected by him as mortgage — Receipt, if constitute acknowledgments to save limitation for suit for redemption of mortgage — Unconditional acknowledgment—Whether implies promise to pay: — Whether necessarily implies promise to pay debt — Whether eloudl be addressed to person entitled — Whether eloudl be addressed to person entitled — Writing recording payment—When amounts to acknowledgment of liability — Writing recording payment—When amounts to acknowledgment of liability — Magning of Acquisition — Acquisition of land by Government (a) Collector refusing to make award for compensation—Suit against collector for damages—Limitation — Acquisition of Land by Government (a) Collector refusing to make award for compensation—Suit against collector for damages—Limitation — Acquisition of Land by Government (b) Suit for compensation—Appeal under Criminal Procedure Code — Provision for—Limitation — Acquistion of Lord of Appeal from Appeal under Criminal Procedure Code — Provision for—Limitation — Act of Government officer (a) Suit for setting ande	stay of sale — Whether amounts to acknowledgmen	t	
tal amount — Whether sufficient acknowledgment under decree (vii) Application for probate — Objection that applicant is debtor to estate of deceased — Reply by applicant admitting his hability—Snifficiency of, as acknowledgment (j) Entry in defendant's own book, not communicated to any one else—Whether sufficient acknowledgment under S. 19 (k) Mortgage—Whotgages with possession of rights in land which later were commuted into fixed money allowance to be paid from Government Treasury—Mortgage receiving payments and giving to Government receipts signed by him as mortgage — Receipts, if constitute acknowledgments to save limitation for suit for redemption of mortgage —Unconditional acknowledgment of limitation of mortgage — S. 19 N. 48 —Unqualified acknowledgment of liability in respect of a debt— Whether necessarily implies promise to pay debt — S. 19 N. 8 —Whether should be addressed to person entitled S. 19 N. 8 Explained a sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency of the sufficiency o	of liability under decree	S 19 N 47	7
under decree (vii) Application for probate — Objection that applicant is debtor to estate of deceased — Reply by applicant admitting his hability—Snificiency of, as acknowledgment admitting his hability—Snificiency of, as acknowledgment (j) Entry in defendant's own book, not communicated to any one else—Whether sufficient acknowledgment under S. 19 (k) Mortgage—Mortgage with possession of rights in land which later were commuted into fixed money allowance to be paid from Government Treasury—Mortgage recoving payments and giving to Government receipts signed by him as mortgage — Receipts, if constitute acknowledgments to save — Uniconditional acknowledgment—Whether implies promise to pay: —Unconditional acknowledgment—Whether implies promise to pay: —Whether necessarily implies promise to Pay debt — Whether necessarily implies promise to Pay debt — S19 N 8 —Whether chical be addressed to person entitled S19 N 5 —Whiting recording payment—When amounts to acknowledgment of liability S19 N 5 Acquiescence — Defence of, it can prevail over statutory period of limitation Freamble N 5 —Doctrine of (a) As distinguished from the doctrine of laches Preamble N 6 — (b) As distinguished from doctrine of laches Preamble N 6 — (b) Sa distinguished from doctrine of limitation Preamble N 6 Acquisition — Acquisition of land by Government (a) Collector refusing to make award for compensation — Sult against collector for damages—Limitation A 120 N 9 Acquisition — Appeal from — Appeal under Criminal Procedure Code — Provision for — Limitation A 120 N 9 Act — Act of Government officer (a) Suit for setting ande	(vi) Application for extension of time for payment of decre	:	
(vii) Application for probate — Objection that applicant is debtor to estate of deceased — Reply by applicant admitting his hability—Snificiency of, as acknowledge ment	under deeree	C 10 NT 41	7
debtor to estate of deceased.— Reply by applicant admitting bis lability—Snificioney of, as acknowledgment (a) Entry in defendant's own book, not communicated to any one else—Whether sufficient acknowledgment under S. 19 (b) Mortgage—Mth possession of rights in land which later were commuted into fixed movely allowance to be paid from Government Treasury—Mortgage with possession of rights in land which later were commuted into fixed movely allowance to be paid from Government Treasury—Mortgage receiving payments and giving to Government receipts signed by him as mortgage—Receipts, if constitute acknowledgments to save limitation for suit for redemption of mortgage—S. 19 N 46 —Unconditional acknowledgment—Whether implies promise to pay: —Unqualified acknowledgment—Whether implies promise to pay: —Whether necessarily implies promise to pay debt—Whiting recording payment—When amounts to acknowledgment of liability ——S. 19 N 8 Acquiescence—Defence of, if can prevail over statutory period of limitation ——Preamble N 5 —Doctrine of — (a) As distinguished from doctrine of laches ——Preamble N 6 —(b) As distinguished from doctrine of limitation ——Preamble N 6 —Acquisition ——Acquisition of land by Government (a) Collector refusing to make award for compensation—Suit against collector for damages—Limitation ——Acquisition —	(vii) Application for probate — Objection that applicant i	s	'
ment S 19 N 47 (j) Entry in defendant's own book, not communicated to any one else—Whether sufficient acknowledgment under S. 19 (k) Mortgage—Mortgages with possession of rights in land which later were commuted into fixed money allowance to be paid from Government Treasury—Mortgage receiving payments and giving to Government receipts signed by him as mortgage—Receipts, if constitute acknowledgments to save limitation for suit for redenption of mortgage—S 19 N 46 —Unconditional acknowledgment—Whether implies promise to pay: —Unqualified acknowledgment—Whether implies promise to pay: —Whether necessarily implies promise to pay debt—Whether chould be addressed to person entitled S 19 N 8 —Whether eloudla be addressed to person entitled S 19 N 8 Acquiescence—Defence of, if can prevail over statutory period of limitation Preamble N 5 —Doctrine of (a) As distinguished from the doctrine of laches Preamble N 6 —(b) As distinguished from doctrine of limitation Preamble N 6 Acquisition —Acquisition of land by Government (a) Collector refusing to make award for compensation—Sut against collector for damages—Limitation A 120 N 9 Acquisition —Order of —Appeal from —Appeal under Criminal Procedure Code — Provision for — Limitation A 120 N 9 Act —Act of Government officer (a) Suit for setting ande	debtor to estate of deceased — Reply by applican	t	
(s) Entry in defendant's own book, not communicated to any one else—Whether sufficient acknowledgment under S. 19 (k) Mortgage—Mortgages with possession of rights in land which later were commuted into fixed money allowance to be paid from Government Treasury—Mortgage receiving payments and giving to Government receives signed by him as mortgage — Receipts, if constitute acknowledgments to save limitation for suit for redemption of mortgage — S. 19 N. 46 —Unconditional acknowledgment of Inability in respect of a debt— —Whether necessarily implies promise to pay debt — S. 19 N. 8 —Whether elocid be addressed to person entitled — S. 19 N. 8 —Whether elocid be addressed to person entitled — S. 19 N. 8 —Whether of though the addressed to person entitled — S. 19 N. 8 Acquistence — Defence of, it can prevail over statutory period of limitation — Freamble N. 5 —Doctrine of — (a) As distinguished from the doctrine of laches — Freamble N. 6 —Meaning of — Freamble N. 6 Acquisition — Acquisition of land by Government — Suit against collector for damages—Limitation — Suit against collector for damages—Limitation — Acquisition — Acquisition — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal Procedure Code — Provision for — Limitation — Acquisition — Acquisition — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal Procedure Code — Provision for — Limitation — Acquisition — Acquisition — Acquisition — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal Procedure Code — Provision for — Limitation — Appeal under Criminal Procedure Code — Acquisition — Appeal under Criminal Procedure Code — Acquisition — Appeal under Criminal Procedure Code — Appeal Procedure Code — Appeal Procedure Code — Appeal Procedu			,,
clss—Whether sufficient acknowledgment under S. 19 (k) Mortgage—Whot prossession of rights in land which later were commuted into fixed money allowance to be paid from Government Treasury—Mortgage with payments and giving to Government receipts signed by him as mortgage—Receipts, if constitute acknowledgments to save limitation for suit for redemption of mortgage—S. 19 N 8 —Unconditional acknowledgment—Whether implies promise to pay: —Unqualified acknowledgment—Whether implies promise to pay: —Whether necessarily implies promise to pay debt— —Whether necessarily implies promise to pay debt— —Whether chould be addressed to person entitled S19 N 8 —Whether chould be addressed to person entitled S19 N 8 Acquiescence—Defence of, if can prevail over statutory period of limitation Preamble N 5 —Doctrine of (a) As distinguished from the doctrine of laches Preamble N 6 —Meaning of Preamble N 6 Acquisition —Acquisition of land by Government (a) Collector refusing to make award for compensation—Suit against collector for damages—Limitation A 120 N 9 Acquisition Order of —Appeal from —Appeal under Criminal Procedure Code — Provision for — Limitation A 120 N 9 Act —Act of Government officer (a) Suit for setting ande	(1) Entry in defendant's own book, not communicated to any one	, 5151(4)	•
later were commuted into fixed money allowance to be paid from Government Treasury—Mortagage recoving payments and gring to Government receipts signed by bim as mort gageo — Receipts, if constitute acknowledgments to save lunitation for suit for redemption of mortgage — S 19 N 8 — Unoquitional acknowledgment—Whether implies promise to pay S 19 N 8 — Unqualified acknowledgment of liability in respect of a debt — Whether necessarily implies promise to pay debt — S 19 N 8 — Whether elocald be addressed to person entitled S 19 N 8 — Whiting recording payment—When amounts to acknowledgment of liability S 19 N 5 — Whiting recording payment—When amounts to acknowledgment of liability S 19 N 5 — Dectrine of S 19 N 6 — Dectrine of S 19 N 6 — Preamble N 6 — Dectrine of S 19 N 6 — Meaning of Preamble N 6 — Preamble N 6 — Preamble N 6 — Preamble N 6 — Preamble N 6 — Preamble N 6 — Acquisition — Acquisition of land by Government (a) Collector refusing to make award for compensation — Suit against collector for damages—Limitation A 120 N 9 Acquistion — Appeal from — Appeal under Criminal Procedure Code — Provision for — Limitation A 120 N 9 Acquisted — Provision for — Limitation A 157 N 2 Act — Act of Government officer (a) Suit for setting ande	else—Whether sufficient acknowledgment under S. 19	S 19 N 46	õ
from Government Trossury—Mortgagee receiving payments and gring to Government receipts singled by bim as mortgage — Receipts, if constitute acknowledgments to save lumitation for suit for redemption of mortgage \$19 N 46 —Unconditional acknowledgment—Whether implies promise to pay: \$19 N 8 —Unqualified acknowledgment—Whether implies promise to pay: \$19 N 8 —Whether necessarily implies promise to pay debt \$19 N 8 —Whether eccessarily implies promise to pay debt \$19 N 8 —Writing recording payment—When amounts to acknowledgment of liability \$19 N 5 —Writing recording payment—When amounts to acknowledgment of liability \$19 N 5 Acquiescenee —Defence of, it can prevail over statutory period of limitation Preamble N 5 —Doctrine of Preamble N 6 —(a) As distinguished from the doctrine of laches Preamble N 6 —Meaning of Preamble N 6 Acquisition Preamble N 6 Acquisition of land by Government Preamble N 6 —Acquisition of land by Government A 120 N 9 (b) Sunt for compensation — Limitation A 120 N 9 Acquitated A 120 N 9 Acquitated A 120 N 9 Acquitated A 120 N 9 Acquitated A 120 N 9 Acquitated A 120 N 9 Acquitated A 120 N 9 Acquitated A 120 N 9 Acquitated A 120 N 9 Acquitated A 120 N 9 Acquitated A 120 N 9 Acquitated A 120 N 9 Acquitated A 120 N 9 Acquitated A 120 N 9 Act A 157 N 2	(k) Mortgage Mortgagee with possession of rights in land which	1	
and gring to Government receipts signed by him as mott- gages — Receipts, if constitute acknowledgments to save limitation for suit for redemption of mortgage \$19 N 46 — Unconditional acknowledgment—Whether implies promise to pay: — Unqualified acknowledgment of liability in respect of a debt — Whether elecasarily implies promise to pay debt \$19 N 8 — Whether should be addressed to person entitled \$19 N 8 — Whiting recording payment—When amounts to acknowledgment of liability \$19 N 5 Acquisition Freamble N 5 — Detence of, it can prevail over statutory period of limitation Freamble N 5 — Detence of, it can prevail over statutory period of limitation Freamble N 6 — Detence of, it can prevail over statutory period of limitation Freamble N 6 — Meaning of Preamble N 6 Acquisition Preamble N 6 Acquisition of land by Government (a) Collector refusing to make award for compensation — Suit against collector for damages—Limitation A 120 N 9 Acquistion A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 157 N 2 Act — Act of Government officer (a) Suit for setting ande	from Government Treasury.—Mortgages receiving payment	1	
gages — Receipts, if constitute acknowledgments to save Unintation for suit for redemption of mortgage S 19 N 46 —Unconditional acknowledgment—Whether implies promise to pay: Unqualified acknowledgment—Whether implies promise to pay: Whether necessarily implies promise to ray debt S 19 N 8 —Whether hendle be addressed to person entitled S 19 N 5 —Writing recording payment—When amounts to acknowledgment of liability S 19 N 5 Kequiescenee —Defence of, it can prevail over statutory period of limitation Preamble N 5 —Dectrine of (a) As distinguished from the doctrine of labels Preamble N 6 — (b) As distinguished from doctrine of limitation Preamble N 6 —Meaning of Preamble N 6 Acquisition Acquisition of land by Government (a) Collector refusing to make award for compensation — Suit against collector for damages—Limitation A 120 N 9 (b) Suit for compensation — Limitation A 120 N 9 Acquistid A 120 N 9 Acquistid A 120 N 9 Acquistion Order of —Appeal from —Appeal under Criminal Procedure Code — Provision for — Limitation A 157 N 2 Act Act of Government officer (a) Suit for setting aside	and giving to Government receipts signed by him as mort		
Unconditional acknowledgment—Whether implies promise to pay: Unqualified acknowledgment of labelity in respect of a debt— Whether necessarily implies promase to ray debt— Whether necessarily implies promase to ray debt— Whether hendle be addressed to person entitled S19 N 5 Whiting recording payment—When amounts to acknowledgment of liability S19 N 5 Kequiescence—Defence of, it can prevail over statutory period of limitation—Preamble N 5 Detertine of Preamble N 6 (a) As distinguished from the doctrine of labels Preamble N 6 Meaning of Preamble N 6 Acquisition—Acquisition of land by Government (a) Collector refusing to make award for compensation—Suit against collector for damages—Limitation A 120 N 9 (b) Sunt for compensation—Limitation A 120 N 9 Acquistid —Order of —Appeal from —Appeal under Criminal Procedure Code —Provision for — Limitation A 157 N 2 Act Act of Government officer (a) Suit for setting aside	gages — Receipts, if constitute acknowledgments to save	9	
— Unqualified acknowledgment of lability in respect of a debt — Whether necessarily implies promas to Fay debt S 19 N 8 — Whether chould be addressed to person entitled S 19 N 5 — Writing recording payment—When amounts to acknowledgment of liability S 19 N 5 Kequiescence S 19 N 5 — Defence of, it can prevail over statutory period of limitation Preamble N 5 — Doctrine of S 19 N 5 — Octrine of Preamble N 6 — (a) As distinguished from the doctrine of laches Preamble N 6 — Meaning of Preamble N 6 — Meaning of Preamble N 6 — Acquisition of land by Government Preamble N 6 Acquisition of Lind by Government A 120 N 9 (b) Sut for compensation — Limitation A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted A 120 N 9 Acquisted	Imitation for suit for redemption of mortgage	. S19N46	
Whether necessarily implies promise to pay debt \$19 N 8 —Whether heroid be addressed to person entitled \$19 N 5 —Writing recording payment—When amounts to acknowledgment of liability \$19 N 5 Acquiescence \$19 N 5 Acquiescence Defence of, it can prevail over statutory period of limitation Preamble N 5 —Doctrine of (a) As distinguished from the doctrine of labels Preamble N 6 — (b) As distinguished from doctrine of limitation Preamble N 6 —Meaning of Preamble N 6 Acquisition A 120 N 9 Acquisition of land by Government (a) Collector refusing to make award for compensation — Suit against collector for damages—Limitation A 120 N 9 (b) Sunt for compensation — Limitation A 120 N 9 Acquittal A 120 N 9 Act A 157 N 2 Act Act of Government officer (a) Suit for setting ande	Unquelified acknowledgment of liability in secreet of a debt	. 51511	٥
Writing recording payment—When amounts to acknowledgment of liability	Whether necessarily implies promise to pay debt	. S19N 8	
liability			5
Acquiescence Defence of, it can prevail over statutory period of limitation Detectine of (a) As distinguished from the doctrine of lackes (b) As distinguished from doctrine of limitation Meaning of Acquisition Acquisition Acquisition of land by Government (a) Collector refusing to make award for compensation Suit against collector for damages—Limitation (b) Suit for compensation— Limitation Acquitted Order of — Appeal from — Appeal under Criminal Procedure Code Provision for — Limitation Act Act of Government officer (a) Suit for setting aside	11.1.1.1	C 10 M	ĸ
Defence of, it can prevail over statutory period of limitation Doctrine of (a) As distinguished from the doctrine of laches (b) As distinguished from doctrine of limitation Meaning of Acquisition Acquisition of land by Government (a) Collector refusing to make award for compensation gaunst collector for damages—Limitation At 120 N 9 Acquittal Order of — Appeal from — Appeal under Criminal Procedure Code Provision for — Limitation At 157 N 2 Act Act of Government officer (a) Suit for setting aside	•	. 51514	U
— Doctrine of (a) As distinguished from the doctrine of lackes (b) As distinguished from doctrine of libitation — Meaning of Acquisition — Acquisition — Acquisition of land by Government (s) Collector refusing to make award for compensation — Suit against collector for damages—Limitation — (b) Suit for compensation — Limitation — A 120 N 9 Acquittat — Order of — Appeal from — Appeal under Criminal Procedure Code — Provision for — Limitation — A 157 N 2 Act — Act of Government officer (a) Suit for setting aside		Preamble N	ĸ
- (b) As distinguished from doctrine of limitation	Doctrine of	, z reambio ii e	•
Meaning of			
Acquisition Acquisition of land by Government (a) Collector refusing to make award for compensation — Suit against collector for damages—Limitation A 120 N 9 (b) Suit for compensation — Limitation A 120 N 9 Acquittal Order of — Appeal from — Appeal under Criminal Procedure Code — Provision for — Limitation A 157 N 2 Act Act of Government officer (a) Suit for setting aside	***		
— Acquisition of land by Government (a) Collector refusing to make award for compensation — Suit against collector for damages—Limitation		. = = (•
(a) Collector refusing to make award for compensation — Suit against collector for damages—Limitation	Acquisition of land by Government		
(b) Suit for compensation — Limitation A 120 N 9 Acquittal — Order of — Appeal from — Appeal under Criminal Procedure Code — Provision for — Limitation A 157 N 2 Act — Act of Government officer (a) Suit for setting aside	(a) Collector refusing to make award for compensation - Sur	t	
Acquittal Order of — Appeal from — Appeal under Criminal Procedure Code — Provision for — Limitation A 157 N 2 Act Act of Government officer (a) Suit for setting aside	against collector for damages—Limitation		
— Order of — Appeal from — Appeal under Criminal Procedure Code — Provision for — Limitation A 157 N 2 Act — Act of Government officer (a) Suit for setting aside		A 120 N	9
— Provision for — Limitation A 157 N 2 Act of Government officer (a) Suit for setting aside	Order of — Anneal from — Appeal under Criminal Procedure Cod	А	
—Act of Government officer (a) Suit for setting ande	- Provision for - Limitation		3
(a) Suit for setting ande			
	Act of Government officer		
/-/		A 14 N 9	3
Lim. 168			-

2014 CENTRAL INDEX	
Act—Act of Government officer—Suit for setting aside—(Conti	.)
(ii) Illustrative cases where it is not necessary for plain	
tiff to set aside act A 14	K 2; A 14 S
(iii) Limitation	
(a) Act, whether must be binding on plaintiff to	
applicability of Art. 14	A 14 N
(b) Residuary provision of	. 4
(c) Starting point	. A 14 S
(d) Time occupied in proceedings before revenue	
authorities, whether excluded	
(iv) "Setting aside," whether implies act binding nor	1
plaintiff until and unless it is set aside	A 14 N
—Act alleged to be in pursuance of enactment	•
(a) "Alleged to be"—Meaning of	A 2 N
(b) Assumption of pursuance is not permissible	A 2 N
(c) Meaning of — Honest belief of statutory powers, if indispen-	
sable to constitute	A 2 N
(a) Doing or omitting to do	
	Y 3 Z
(i) "Doing or omitting to do" — Meaning of	
(ii) Suit for compensation (a) Limitation	
(i) On statements contained in plaint defendants	i
doing the act at their own hands-Limits-	
tion applicable	Y 3 %
(11) Special and general provisions of	7 5 X
(iii) Starting point	
(iv) Snit against agent for damages for negligence	A 2 N
of duty under enactment	
(v) Snit against Municipal Board for illegal dis-	
tress of plaintiff's goods under colour of	A 2 N
(vi) Suit for specific sum of money illegally levied	
by defendant under colour of enactment:	¥ 5 %
(vii) Under Enclish Law	¥ 5 N
(viri) Where special or local law prescribes dif-	A 2 N
ferent period of limitation ***	A2N
(b) Enactment must be in force	AZX
(c) Meaning of	4
- Act necessary to be set aside - Plaintiff framing suit in different	
manner—Plaintiff, whether can evade limitation applicable to suit	A 14 N
for setting aside act or order	A 14 N
Act not binding on plaintiff-Illustrative cases	
Act not necessary to be set aside Prayer by plaintiff for setting	A 14 N
aside act—Effect of Act or omission under contract — Compensation for — Limitation	
applicable, whether same as applicable to suit for compensation	A 2 N
for doing or omitting to do act in pursuance of enactment	A - 4
Act or order	
(a) Suit for setting aside	
(1) Act or order of Government officer in his official capa-	A 120 N
city — Limitation	-

GENERAL INDEX	2010
Act—Act or order—Suit for setting aside—(Contd.)	
(ii) Declaratory suit that defendants are not permanent tenants and that order of Revenne Officer that defen.	
dants are such tenants is incorrect—Limitation appli-	A 120 N 8
(iii) Suit by plaintiff for declaration that order of Collector under Bombay Land Revenne Code is null and youd — Limitation applicable	A 120 N 8
(iv) Suit where relief asked for is on the strength of and in conformity with act—Limitation applicable	A 14 N 2
(v) Whether necessary—Act null and void as made without jurisdiction, whether must be set aside	A 14 N 2
	1 N 1 F N 3
Adjournment	
-Adjournment of application for execution for hearing - Whether	
operates as stay or injunction	S 15 N 14
Adjustment	
	5, A 174 N 6
	A 166 N 6
and set aside sale—Limitation for such application Adjustment of decree out of Court — Application for notice as to recording of certification	A TOL M B
(a) Adjustment entered into after date of decree of Court of first instance but before date of appellate decree dismissing	
appeal—Limitation (b) Adjustment made between dates of preliminary and final	A 174 N 2
decrees for sale—Limitation	A 174 N 2
(c) Application to record agreement not to execute decree made before passing of decree—Limitation	
(d) Application under Civil P C, O 21 R 2 sub-rule 1 -	A 174 N 2
(a) Application under O 21 R 2 (2) Civil P. C Whether main.	
tamable before decree is formally drawn up	A 174 N 6 A 174 N 2
default —Fresh application, if	
(h) Effect of bar of limitation	A 174 N 4 A 174 N 8
(i) Extension of time — time whether can be extended by con-	
(j) E	A 174 N 6
(k) I	A 174 N 7
cising his right to make such application — Effect of —	
Romedies of judgment-debtor (i) Limitation—Starting point A 174, A 174 N	A 174 N 7
	A 174 N 4
(n) Order 21 R. 2, Civil P C, whether limited to money decree	A 174 N 2
(o) Statement of objection put in by judgment-debtor in answer to application by decree-holder for execution.—Whether	
amounts to application for recording adjustment	A 174 N 4

2676		GENERAL	INDEX		
Adjustment — recording of	- Adjustment of d	ecree out	of Court;	application	for notice as to
(p) Sure	ty for judgment-d	ebtor, whe	tber can p	plead uncerti	
	ustment made by h must make such a		···		A 174 N 4
Administratio	u				
	also Legal Repres		~		
	ation of estate of de tation — Where a				for
(a) Litti		aministrati	on is ente	illeu in suit	A 123 N 3
(b) Who	ther barred if cla	 im for leg	acv or sh	are bas beco	ome
bar	red			•••	A 123 N 3
	can sue	••	•••		A 123 N 3
-Bons fide 1	prosecution in admi	nistration :	uit of a cla	im by a cred	itor
under p	romissory note by ether can be exclu	deceased o	lebtor—Pe	riod of prose	nh.
	suit on promissory		ubaring in	ministron for a	S 14 N 12
	whom letters of a		ion have	been grante	d
Whether	r trusteo for a speci	fic pprpose			P 10 11 10
-Same porse	on suing as admini	stratrix of	an estate	in one snit t	and L
of the es	tato of a different	person in a	nother sui	t Whether	5 14 N 16
Suit for	e plaintiff for purpo	363 Ot D. 1:	•	<i>,</i>	•••
	due by heir to de	ceased if i	leducible f	rom share p	ау.
ahl	e to heir when suit	for recover	v of such	debt is barre	d: 0011-
(b) Fact	of one creditor ha	avine instit	uted suit	for administ	124.
tion	of estate of a dece	ased debto	r-Wheth	er saves non	ggN6
		ier creditor		•••	•••
Administrator					S 19 N 55
	gment of liability b			ect of	A 69 N 7
	tor de son tort—W			Indian St	•••
Administra	tor of estate of dece act—Suit against hi	ased person	T.imitat	DA THRIEF PA	A 123 N 4
Administra	tor of estate of inte	state nerse	-Suit by	against exec	A 120 N 2
tor de so	n tortTimitation	-			··· A 120
Alienation	by-Alienation wi	thout per	mission of	Court-He	II.
whether	bound to set asi	de alienati	on hetere	he can ciai	A 91 N 19
Joint admi	nistrators—Capacit	v of one to	rive disch	arge on beha	olf 57 N 26
of all					••
Letters of	administration gran —Suit in respect of	ited only v	with refere	nce to portion	nt
or estate-	—Suit in respect of ers of administratio	nalance	Avnetner c	with regard	to 817 N 8
such port	ion	L Davo Doo.			
Suit agains				,	A 120 N 15
	or accounts—Limit or legacy—Limitat				A 193 N 3
(c) Suit f	or monies misappre	mristed by	administr	ator-Limita	A 120 N 4
tion	—Starting point			•••	N 3
(d) Suit i	or residue bequeath	ed by testa	tor-Limit	tation	
(f) Suit i	or share of property inder Legal Represe	r of intestal mtatives Sn	eLimita ita ActT.	imitation: Ar	ts. 33 to 35 N 1
(i) Suit (Mobat rechtese	Trees to Co			

GENERAL INDEX	2677
Administrator—(Contd.)	
Suit by	
(a) Limitation, if can begin before grant of letters of administra-	S 17 N 8
(h) Suit under Indian Fatal Accidents Act-Limitation	A 21
(c) Suit under Legal Representatives Suits Act—Limitation	A 20
Admission	
- Allegations to save suit from bar admitted by defendant-Plaintiff,	C 0 17 00
if should prove them By counsel on point of limitation, if will hind client	S 3 N 38 S 3 N 21
By counsel on point of limitation, if will hind client By party on point of limitation—Effect	S 3 N 21
	002.22
Adapted son	
Right of Aurasa son, if has independent cause of action to chal-	C 0 (0) N 0
lenge adoption by father	S 2 (8) N 8
(a) Adverse possession by stranger prior to adoption—Adopted	
son, if entitled to extension of time on ground of micority	S 6 N 14
(b) For impeaching alienation by adoptive mother before adop-	2
tion-Suit, whether one for declaration that alienation is	
void A 125 N 3	, A 125 N 10
(c) For possession of adoptive mother's estate, suit also involving	
affirmation of adoption—Limitation (d) For property of last male owner—Limitation (e) For property of last male owner—Limitation	A 141 N 16
(d) For property of adoptive mother—Limitatioo (e) For property of last male owner—Limitatioo	A 141 N 7 A 141 N 7
(f) For setting aside alienation by adoptive father of ancestral	V 141 M
property—Limitatioo	A 126 N 5
9774 A	A 141 N 7
	A 141 N 7
-Whether has title of remaioderman to property alienated by widow	15 432 21 1
hefore adoption	A 140 N 3
Adoption	
——Invalidity of	
(a) Omission to bring declaratory suit within prescribed period—	
Whether bar to suit for possession of property against person	
claiming to be in possession in right of adoption	A 118 N 2
(h) Suit for declaration	
(i) Alteration of property of adoptive father subsequent	
to adoption—Whether gives fresh cause of action	A 118 N 9
(ii) By minor natoral son born subsequent to adoption-	
Limitation	A 118 N 6 A 141 N 16
(iii) Limitation (iv) Limitation—Staiting point—Registration of deed of	W 141 W 10
adoption, if amounts to knowledge so as to start limi.	
tation running	A 118 N 5
(v) Minor plaintiff, if and when can be said to have know-	
ledge so as to start time rnooing	A 118 N 6
(vi) Onus of proof (vii) Suit by Hindn reversioner	A 118 N 7
(vii) Suit by Hinda reversioner (viii) Whether can be converted into one for recovery of pos-	A 118 N 8
session to interests of justice	A 118 N 2
(c) Suit for possession against person who claims to be in pos-	12 210 11 2
session in right of adoption—Limitation	A 118 N 2
*	

Adoption -(Contd.)						
Suit on title bas	sed on adopt	ion for	possession	of office at	nd pro-	
perty attached		••	•••			A 124 N 12
Validity of						
(a) Suit for de	claration					
	itation-Star				***	A 119 N 4
(ii) Suit	for possession	n where	plaintiff h	as to estable	sh vali-	
dity	of adaption	an Loui-		•		1 444 100
(iii) ^r .						1
What is, wit				•••		
Adverse Possession						
-Acquisition of t	itle hv_Me	re const	enetiva ne	w doiseass	tort Ili	
enable a person					A 142	& 144 N 19
Acquisition of tit						
notice of suit	to by 12 year	a berion	12 PHAT O	кенцины ре		S 15 N 21
		·· !>		in	-Acarea	
Admission of lial possession W	lility in writ	ing and	signed by	person in	heleter •	S 19 N 65
Against female li	necuer amou	e du sini	renowieds	ment to ma	ciona er	
10-1		_ Willet	mer nar ag	SETTING LOVE	31014413	A 141 N 13
	···					
Against female					A 149	& 144 N 49
			•••	•••	21 11-	
Against Governm						A 149 N 9
(a) Acquisition		Manner o	i—Burder	of proof	•••	
(b) Buiden of			٠.		4 149	& 144 N 99
(1) 15 15	on person cla f of adverse	iming tit	10	Lauten nasi	2 111	_
(11) Proo	shift onus to	possessio	n ior a s	norter peru		& 144 N 99
(c) Can be ple		the dot	ernmens	•••	A 142	& 144 N 99
(d) Grant by t	hird nerean o	f fighery	leases halo	neing to Cr	:	
a va abato (p)	of adverse pos	e Hallery	104363 11610	nging to or	A 142	& 144 N 11
(e) Requisites-	-Same as in	case of	adverse i	nossession 8	against	
private p	erson except	longer	period of	DOSSESSION	neces-	
sary				***	A 142	& 144 N 99
(f) What const	itutes		•••	410		A 143 M
-Against Hındu fa		i dearca sa	arnst bis s	OB	A 142	& 141 N 83
-Against Hindu w		440100 a9	MINOR 2110 0			
(a) Adverse ag	ainst her ad	onted son	only fro	m date of	adop-	NT G3
tion			•••	***	A 143	t 144 N 83
(b) Repairs or	payment of t	axes, etc.	hy rever	sioner duri	g her	r 144 N 96
lifetime a	re not eviden	ra of adv	erse posses	sion :	A 142	(143 1/ 0-
(c) Suit for pos	ssession by ad	lopted so	n governed	by Art. 1	11 for	i. 144 N ⁸³
limitation			•••	•••	A 142	
Against last ma	le owner-V	Vhether	bars rever	sioner of i	emale	141 N 14
limited owner			•••	•••		
 Against municipe sides of public s 				pect of drai		146.A N 5
				-61	A 142 &	144 N 81
Against one co-ti						
——Against person h (a) Adverse por	aving no pres	ent right	to possess	w Whether	r bars	27 72
	ssession again when success			r— 11 Herbe	A 142 8	: 144 N 78
(b) Life estate	holder shore	ting prov	s sertv	session of a		
not advers	se to person e	ntitled to	remainde	r	A 142 8	, 144 N 78
44.1011	P					

A 142 & 144 N 35

Adverse possession-Against person having no present right to possession-(Contd.) (c) Plaintiff, under sentence of transportation, gifting property to another-Condition that if he returned, donee to return it-Donee selling property more than 12 years before plaintiff's return-Snit for possession by plaintiff on his return -Limitation -Starting point A 142 & 144 N 78 (d) Property mortgaged for fixed period-Death of mortgager -Unauthorized sale of mortgaged property by guardian of minor son of deceased mortgagor-Purchaser redeeming prematurely-Suit for possession against purchaser-Starting noint of limitation A 142 & 144 N 78 Against the public (a) Person in adverse possession of property vested in municipality for statutory period-Right of municipality is extinguisbed—Right of public also becomes extinguished . A 142 & 144 N 99a (b) Public may lose its rights of user over property by the adverse possession of a private person A 142 & 144 N 99a (e) There can be no acquisition of title against the public by A 142 & 144 N 99a adverse possession Against trust property by stranger (a) Possession is adverse to trust A 142 & 144 N 80 (b) Stranger not denying trust but taking possession of trust property as trustee-Possession not adverse to trust but adverse to trustee A 142 & 144 N 80 -Against trustee-Adverse possession against one trustee is adverse A 142 & 144 N 35 against all -Against widow -- Whether adverso to son adopted subsequently A 141 N 7 -Animus of person doing acts should be ascertained . A 142 & 144 N 16 -By agent, servant, eto (a) As long as agency continues, possession does not become A 142 & 144 N 57 (b) Repudiation of agency, etc to knowledge of principal accompanied by overt act amounts to assertion of adverse A 142 & 144 N 57 (c) Whether enures for benefit of principal A 142 & 144 N 57 By alience from trustee-Alience for valuable consideration can acquire title to trust property by adverse possession A 142 & 144 N 47 By Crown—Crown can acquire title by adverse possession A 142 & 144 N 99 By manager Possession of manager is not adverse . A 142 & 144 N 57 -By the public-Public cannot acquire title by adverse possession A 142 & 144 N 99a By trustee (a) Quasi or constructivo trustee cannot acquire title by adverse possession to trust property A 142 & 144 N 46 (b) Trusteo cannot acquire title to trust property by adverse A 142 & 144 N 46 possession -Co.hetrs (a) Mahomedan co-heirs-Possession of one-Whether adverse A 142 & 144 N 44

(b) Possession of an heir of a deceased Christian is not adverse

(c) Possession of one prima facie not adverse to another A 142 & 144 N 44

to co-heirs without proof of ouster

to others

Adverse	possession-	(Contd.)	

-Confiscation and re-grant—Order confiscating all lands in Oudh and vesting them in Government-Re-grant by Government-Suit by grantee for possession within 12 years of grant maintain-A 142 & 144 N 73 abla -Constructive possession-Trespasser cannot acquire title by pres-A 142 & 144 N 53 cription on ground of constructive possession -Co-owners (a) Adverse possessinn against co-owner - Whether adverse A 142 & 144 N 82 against other co-owners (b) Adverse possession against minor co-owner-Denial of his A 142 & 144 N 77 title to bis knowledge, whether necessary (c) Adverse possession by, against atranger-Possession by some A 142 & 144 N 41 is nn beball of all (d) Adverse possession inter se (i) A and B two Hindu coparceners-A dies leaving C as heir-B takes possession of separate property of A-A 142 & 144 N 35 Possession of B is adverse to C (ii) A, B, C three co-sharers-A in adverse possession against C but not against B-C's share transferred to

B-Adverse possession of A of such abaro ceases: A 142 & 144 N 35 (iii) Adverse possession of co-owner may extend to a por-A 142 & 144 N 35

tion only of common property (iv) Application to municipality by a tenant-in-common to build a wall does not amount to denial of title of A 142 & 144 N 35 other co-beirs ...

(v) Building of residential house on common land by one cosharer amounts to assertion of hostile title to the A 142 & 144 N 85 knowledge of other cosharers

(vi) Conduct of co-owner to prove adverse possession must be unequivocal and inconsistent with his character as A 142 & 144 N 35 co-owner

(vii) Co.owner abandoning his share-Subsequent posses-A 142 & 144 N 43 sion by other co-owner is adverse (viii) Cosharer's possession becomes adverse when he rehuilds

A 142 & 144 N 35 a house making it preca ... (ix) Evidence to show adverse possession by co-tenant must

A 142 & 144 N 35 be clearer than between strangers A 142 & 144 N 35 (x) Illustrative cases (xi) Mere non-participation in profits by one and exclusive

possession by other will not constitute adverse posses-A 142 & 144 N 35 sion by latter ... (xii) Mere uninterrupted possessinn of a co-owner is not

A 142 & 144 N 35 adverse to other co-owners ... (xni) Nothing short of onster or something equivalent to it

can make the possession of co-nwner adverse to the A 142 & 144 N 35 (xiv) One co-owner acquiring title by adverse possession

against share of other co-nwner-Abandonment by A 142 & 144 N 35 former does not revive latter's titlo (xv) Ouster of plaintiff from part of joint property by

defendant does not amount to assertion of hostile A 142 & 144 N 35 title as regards whole property

Adverse possession—Co-owners—Adverse possession inter se—(Contd.)
(xvi) Person in possession in assertion of hostile title subse-
quently becomes co-owner—His possession does not
cease to he adverse if he continues to assert hostile
title and exercise exclusive possession . A 142 & 144 N 35
(xvii) Possession of co-owner will be adverse to the others if
there is ouster A 142 & 144 N 35
(xvin) Possession of mortgagee under mortgage by two of the
cosharers does not amount to adverse possession of
the cosharers against the third unless the third has
knowledge A 142 & 144 N 35
(xix) Relinquishment by one co-owner of his share—Suhse-
quent possession of other is adverse even if relin- quishment deed is invalid A 142 & 144 N 43
quishment deed is invalid A 142 & 144 N 43 (xx) When there is ouster adverse possession of one co-
owner is not interrupted by the mere fact that a
decree is passed in favour of other establishing his
right as co-owner A 142 & 144 N 35
(e) Alience from co-owner
(1) Alience entitled to possession not obtaining it—Pos-
session of other co-owners — Whether adverse to
alienee A 142 & 144 N 36
(ii) Other co-owner continuing in solo possession — His
possession is not adverse to alience A 142 & 144 N 40
(iii) Possession of—Whether adverse to other co-owners A 142 & 144 N 86
(f) Alionee from co-owner of entire common property—Posses- eion of alionee, whether adverse A 142 & 144 N 36
(g) Alienee from co-owner of his undivided share
(i) Alience entitled to joint possession—His possession is
not adverse to other co-owners A 142 & 144 N 36
(ii) Alience not entitled to possession—His possession is
adverse to other co-owners A 142 & 144 N 36
(h) Alience from co-owner of specific item of common property
-Possession of alieneo is adverso A 142 & 144 N 36
(i) Lamhardar can, by appropriating to his use the profits, acquire a title by adverse possession against cosharers. A 142 & 144 N 35
(1) Licensee from co-owner—Possession of—Whether adverse
to other co.owners A 142 & 144 N 37
(k) Ouster
(1) Actual driving out of co-owner is ouster . A 142 & 144 N 35
(11) Court can find whether there is ouster for statutory
period, though no ouster at any particular moment is proved A 142 & 144 N 35
proved A 142 & 144 N 35 (iii) Demand for partition by one co-owner and refusal by
other who is in possession, does not amount to
ouster A 142 & 144 N 35
(iv) Denial by co-owner in possession of title of other co-
owners to their knowledge amounts to ouster . A 142 & 144 N 35
(v) Entry in revenue papers of the name of one co-owner
(vii) Illustrative cases A 142 & 144 N 35

A 142 & 144 N 33

A 142 & 144 N 35

A 142 & 144 N 35

A 142 & 144 N 35

A 142 & 144 N 35

A 142 & 144 N 35

A 127 N 11

(viii) Knowledge about denial of title of co-owner may be inferred from circumetances of the case; it need not

(x) More fact that a cosherer brought a suit to eject trespasser does not amount to ouster of other cosharers: A 142 & 144 N 3

(xi) Mere non-payment of profits to cosbarer by lambardar

(xui) Partition between co-owners in exclusive possession does not amount to ouster or denial of title of co-

Adverse possession — Co-owners — Onster—(Contd.)

owner not in possession

(xiv) Physical exiction not necessary

(ix) Meaning of

(xii) Onus of proof

other coparceners

as adverse to of her se tenent

is not ouster

be proved by direct ovidence

	rnysical evic							
(xv)	Possession of cosbarers, de	mortgagee	, under me	ortgage by	two of	128	: 144	l N 35
(mm)	Programmation	ocs HOU HIND	and to ouste	Louding of				
(xvi)	Presumption	oi—in cas	se or long	commued	A 1	12 &	: 144	N 85
(roll)	Question is o	ne of fact d	ananding o	n circumste	6			
	each case	•••	•••	•••	A 1	12 0	144	4 N 38
(xv11i)	Sele of portion		roperty by		toes not	0.2	. 144	N 35
	emount to o	uster	•••	•••	A 1		111	LN 9
	Test	•••	•••	•••			, 14ª	1 N 35
(xx)	There should	be refusal,	express of	r implied, t	o allow		111	IN 25
	other co.ow:	nore' enjoym	ent of prop	perty	A 19	2 6	144	1 N 35
(xxi)	When there	is ouster of	co-owner l	by other co	owner,			
	time will no	t etop runni	ng against				111	N 35
		• • •	•		A 1.	2 00	124	. 41 00
(xxiı)	•							
		•		•	A 14	01	14.5	N 35
	hy other co-	owners	•••	•••	A 14	Z	123	
(l) Perti								
(1)	Certain prope	erty in poss	ession of o	ne not pari	itioned			
• • • • • • • • • • • • • • • • • • • •	-His possess	ion is not a	lverse after	partition o	f other A 14	n t	188	N 3S
	properties		• • •	***	A 14			
(11)	Partition amo	ngst co-own	ers does no	t interrupt a	A 14	3 %	144	N 83
, ,	possession	•••	•••	,				
(111)	Possession h	y one co-o	wner of pe	ortion allot	ted to	2.8-	144	N 38
	anothersnbs	equent to pa	rtition is ed	verse to latte	11.17.74	_ ~		
(m) Perso	u m adverse	possession	against ai	II CO-OWDER				
0.440	er obtaining p	ossession fr	om such p	erson on h	19 0 1722	2 &	144	N 39
beha	ut—His posses	ssion is adve	rse to other	co.owners	; A 19.			
(II) LUSSE	SSIUM OF OUR CO	o-owner ent	med to pos	ssession as	such is A 14	2 6-	144	N 35
	adverse to oth	er co-owner	5	•••	W 14			
Сорагсепег					**			
(a) Copar	cener continu	ning to stay	in the pr	operty ever	atter			
alier	ation—Posses	sion of such	coparcener	, whether a	dverse	A	127	N 11
to of	ther coparcene	r from date	of alienation	on				
(b) Posse	ssion of—Whe	ther can be	held as prin	na facie adv		Δ	127	N 11
othe	r coparceners				•••	a		

-Co-tenant-Possession long hut silent-Whether can be construed

Adverse possession-(Contd.)

-Effect of

Effect of
(a) Principal right to sue extinguished—Rights accessory there-
to are also extinguished A 142 & 144 N 93
to are also extinguished A 142 & 144 N 93 (b) Title acquired by adverse possession—Subsequent disposses-
sion by true owner—He is not remitted to his old title A 142 & 144 N 93
(c) True owner's title is extinguished A 142 & 144 N 93
Equity of redemption-Whether can be adversely possessed A 142 & 144 N 7
Essentials of
(a) Continuous possession (i) Possession must be continuous for the statutory
period . A 142 & 144 N 63
(11) Presumption of continuity is prospective rather than
retrospective A 142 & 144 N 63
(b) Open possession
(i) Actual knowledge on part of true owner not neces-
sary A 142 & 144 N 76
(ii) Knowledge on part of true nwner—Snit for possession
of underground mining areas.—Defendant claiming to
be in adverse possession for statutory period, what
must prove
(iii) Possession must be overt and without any attempt at
concealment A 142 & 144 N 76
(17) What 1s-Sub-lessee instead of growing crops, erect-
ing headworks of colliery—Possession open and hence
ndverse to landlord A 142 & 144 N 76
(v) What is not-Mahant getting mutation effected in his
name by ex parte decree—Possession not open · A 142 & 144 N 76
(c) Possession must be actual A 142 & 144 N 12
(c) Possession must be actual A 142 & 144 N 12
(c) Possession must be actual A 142 & 144 N 12 (d) Possession must be adequate in continuity, in publicity and in extent A 142 & 144 N 16
(c) Possession must be actual A 142 & 144 N 12 (d) Possession must be adequate in continuity, in publicity and in extent A 142 & 144 N 16 (e) Possession must be continuous A 142 & 144 N 11
(c) Possession must be actual A 142 & 144 N 12 (d) Possession must be adequate in continuity, in publicity and in extent A 142 & 144 N 16 (e) Possession must be continuous A 142 & 144 N 11 (f) Possession must be in denial of title of true nweer A 142 & 144 N 16
(c) Possession must be actual A 142 & 144 N 12 (d) Possession must be adequate in continuity, in publicity and in extent A 142 & 144 N 16 (e) Possession must be continuous A 142 & 144 N 11 (f) Possession must be in denial of title of true nwner A 143 & 144 N 16 (e) Possession must be open
(c) Possession must be adequate in continuity, in publicity and in extent in extent (d) Possession must be continuous (e) Possession must be continuous (f) Possession must be in denial of title of true nwaer (g) Possession must be open (b) Possession must be peaceful, open and continuous (c) 444 N 16
(c) Possession must be actual A 142 & 144 N 12 (d) Possession must be adequate in continuity, in publicity and in extent A 142 & 144 N 16 (e) Possession must be continuous A 142 & 144 N 16 (f) Possession must be in denial of title of true nweer A 142 & 144 N 16 (g) Possession must be open A 142 & 144 N 16 (h) Possession must be peaceful, open and continuous A 142 & 144 N 16 (i) Protets by owner and possession inspite of them are not
(c) Possession must be adequate in continuity, in publicity and in extent in extent (e) Possession must be continuous (f) Possession must be in denial of title of true nweer (f) Possession must be open (f) Possession must be precedul, open and continuous (f) Possession must be peaceful, open and continuous (f) Protests by owner and possession inspite of them are not necessary. A 142 & 144 N 16
(c) Possession must be actual A 142 & 144 N 12 (d) Possession must be adequate in continuity, in publicity and in extent A 142 & 144 N 16 (e) Possession must be continuous A 142 & 144 N 16 (f) Possession must be in denial of title of true nweer A 142 & 144 N 16 (g) Possession must be open A 142 & 144 N 16 (h) Possession must be peaceful, open and continuous A 142 & 144 N 16 (i) Protets by owner and possession inspite of them are not
(c) Possession must be adequate in continuity, in publicity and in extent in extent (e) Possession must be continuous (f) Possession must be in denial of title of true nweer (f) Possession must be open (f) Possession must be precedul, open and continuous (f) Possession must be peaceful, open and continuous (f) Protests by owner and possession inspite of them are not necessary. A 142 & 144 N 16
(c) Possession must be actual A 142 & 144 N 12 (d) Possession must be adequate in continuity, in publicity and in extent (e) Possession must be continuous (f) Possession must be reaction of title of true number A 142 & 144 N 16 (g) Possession must be open (b) Possession must be peaceful, open and continuous A 142 & 144 N 16 (i) Protests by owner and possession inspite of them are not necessary A 142 & 144 N 16 (j) Right sought to be acquired must be one recognized by law A 142 & 144 N 61
(c) Possession must be adequate in continuity, in publicity and in extent (a) Possession must be continuous (b) Possession must be continuous (f) Possession must be in denial of title of true nweer (g) Possession must be open (h) Possession must be open (h) Possession must be peaceful, open and continuous (i) Protests by owner and possession inspite of them are not necessary. (j) Right sought to be acquired must be one recognized by law A 142 & 144 N 16 —Evidence of
(c) Possession must be actual A 142 & 144 N 12 (d) Possession must be adequate in continuity, in publicity and in extent (e) Possession must be continuous (f) Possession must be orn denial of title of true number A 142 & 144 N 11 (g) Possession must be orn (h) Possession must be open (ii) Protests by owner and possession inspite of them are not necessary. A 142 & 144 N 16 (j) Right sought to be acquired must be one recognized by law A 142 & 144 N 61b Lev A 142 & 144 N 61b
(c) Possession must be adequate in continuity, in publicity and in extent (a) Possession must be to continuous (b) Possession must be continuous (c) Possession must be in denial of title of true nweer (d) Possession must be indenial of title of true nweer (e) Possession must be open (e) Possession must be precedul, open and continuous (i) Protests by owner and possession inspite of them are not necessary. (i) Right sought to be acquired must be one recognized by law (ii) Protests with the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of the protection of
(c) Possession must be actual A 142 & 144 N 12 (d) Possession must be adequate in continuity, in publicity and in extent (e) Possession must be continuous (f) Possession must be orn denial of title of true number A 142 & 144 N 11 (g) Possession must be orn (h) Possession must be open (ii) Protests by owner and possession inspite of them are not necessary A 142 & 144 N 16 (j) Right sought to be acquired must be one recognized by law A 142 & 144 N 16 (ii) Right sought to be acquired must be one recognized by A 142 & 144 N 16 (iii) A flow acts such as granting of lease, execution of mortgage are not sufficient (b) Acts must be scrutimized in the light of relationship
(c) Possession must be actual A 142 & 144 N 12 (d) Possession must be adequate in continuity, in publicity and in extent (e) Possession must be continuous A 142 & 144 N 16 (e) Possession must be in denial of title of true nweer A 142 & 144 N 16 (f) Possession must be open A 142 & 144 N 16 (g) Possession must be peaceful, open and continuous A 143 & 144 N 16 (i) Protests by owner and possession inspite of them are not necessary. A 142 & 144 N 16 (j) Right sought to be acquired must be one recognized by law A 142 & 144 N 60 —Evidence of (a) A few acts such as granting of lease, execution of mortgage are not sufficient A 142 & 144 N 96 (b) Acts must be scrutinized in the light of relationship between parties
(c) Possession must be actual A 142 & 144 N 12 (d) Possession must be adequate in continuity, in publicity and in extent (e) Possession must be continuous (f) Possession must be orn denial of title of true number A 142 & 144 N 11 (g) Possession must be orn (h) Possession must be open (i) Protests by owner and possession inspite of them are not necessary A 142 & 144 N 16 (j) Right sought to be acquired must be one recognized by law A 142 & 144 N 16 (ii) Right sought to be acquired must be one recognized by law A 142 & 144 N 16 (iii) A few acts such as granting of lease, execution of mortgage are not sufficient (b) Acts must be scrutinized in the light of relationship between parties (c) Acts such as sub-letting, mortgaging, excavation etc. of a tank
(c) Possession must be actual A 142 & 144 N 12 (d) Possession must be adequate in continuity, in publicity and in extent (e) Possession must be continuous A 142 & 144 N 16 (f) Possession must be in denial of title of true inwest A 142 & 144 N 16 (g) Possession must be open A 142 & 144 N 16 (g) Possession must be praceful, open and continuous A 142 & 144 N 16 (g) Possession must be precedul, open and continuous A 142 & 144 N 16 (g) Protests by owner and possession inspite of them are not necessary. A 142 & 144 N 16 (g) Right sought to be acquired must be one recognized by law A 142 & 144 N 61 —Evidence of (a) A few acts such as granting of lease, execution of mortgage are not sufficient (b) Acts must be scrittinged in the light of relationship between parties A 142 & 144 N 96 (c) Acts such as sub-letting, mortgagner, exeavation etc, of a tank are ovidence of adverse possession A 142 & 144 N 96
(c) Possession must be actual A 142 & 144 N 12 (d) Possession must be adequate in continuity, in publicity and in extent (e) Possession must be continuous (f) Possession must be orn denial of title of true number A 142 & 144 N 11 (g) Possession must be orn (h) Possession must be orn (ii) Possession interface orn (iii) Proteits by owner and possession inspite of them are not necessary A 142 & 144 N 16 (j) Right sought to be acquired must be one recognized by law A 142 & 144 N 16 (ii) Right sought to be acquired must be one recognized by law A 142 & 144 N 16 (iii) A flow acts such as granting of lease, execution of mortgage are not sufficient (iii) A flow acts such as granting of lease, execution of mortgage are not sufficient (b) Acts must be scrutinized in the light of relationship between parties (c) Acts such as sub-letting, mortgaging, execuation etc. of a tank are evidence of safeves possession (iii) Long ussession and absence of protein full processor ascrement
(c) Possession must be actual A 142 & 144 N 12 (d) Possession must be adequate in continuity, in publicity and in extent (e) Possession must be continuous A 142 & 144 N 16 (g) Possession must be open A 149 & 144 N 11 (g) Possession must be open A 149 & 144 N 11 (g) Possession must be peaculi, open and continuous A 149 & 144 N 16 (h) Possession must be peaculi, open and continuous A 149 & 144 N 16 (i) Protests by owner and possession inspite of them are not necessary. A 149 & 144 N 16 (i) Right sought to be acquired must be one recognized by law A 142 & 144 N 16 (a) Right sought to be acquired must be one recognized by law A 149 & 144 N 16 (b) Acts must be scrutinuzed in the light of relationship between parties A 142 & 144 N 96 (c) Acts such as sub-letting, mortgaging, excavation etc., of a tank are owdence of adverse possession A 142 & 144 N 96 (d) Long possession and absence of proof of license or agreement between owner and occupier—Adverse possession may be
(c) Possession must be actual A 142 & 144 N 12 (d) Possession must be adequate in continuity, in publicity and in extent (e) Possession must be continuous (f) Possession must be in denial of title of true number A 142 & 144 N 16 (g) Possession must be open (h) Possession must be open (i) Proteits by owner and possession inspite of them are not necessary A 142 & 144 N 16 (j) Right sought to be acquired must be one recognized by law A 142 & 144 N 16 —Undence of (a) A few acts such as granting of lease, execution of mortgage are not sufficient (b) Acts must be scrutinized in the light of relationship between parties (c) Acts such as sub-letting, mortgaging, excavation etc. of a tank are evidence of adverse possession A 142 & 144 N 96 (d) Long possession and absence of proof of license or agreement between owner and occupier—Adverse possession may be inferred.
(c) Possession must be actual (d) Possession must be adequate in continuity, in publicity and in extent (e) Possession must be continuous (f) Possession must be in denial of title of true number (g) Possession must be open in denial of title of true number (h) Possession must be peaceful, open and continuous (i) Protests by owner and possession inspite of them are not necessary. (i) Right sought to be acquired must be one recognized by law (ii) Right sought to be acquired must be one recognized by law (iii) Right sought to be acquired must be one recognized by law (iii) Right sought to be acquired must be one recognized by law (iii) Right sought to be acquired must be one recognized by law (iii) Right sought to be acquired must be one recognized by law (iii) Right sought to be acquired must be one recognized by law (iii) Right sought to be acquired must be one recognized by law (iii) Right sought to be acquired must be one recognized by law (iii) Right sought to be acquired must be one recognized by law (iii) Right sought to be acquired must be one recognized by law (iii) Right sought to be acquired must be one recognized by law (iii) Right sought to be acquired must be one recognized by law (iii) Right sought to be acquired must be one recognized by lay 144 N 16 (iii) Right sought to be acquired must be one recognized by lay 144 N 16 (iii) Right sought to be acquired must be one recognized by lay 144 N 16 (iii) Right sought to be acquired must be one recognized by lay 144 N 16 (iii) Right sought to law 143 & 144 N 16 (iii) Right sought to law 143 & 144 N 16 (iii) Right sought to law 143 & 144 N 16 (iii) Right sought to law 143 & 144 N 16 (iii) Right sought to law 143 & 144 N 16 (iii) Right sought to law 143 & 144 N 16 (iii) Right sought to law 143 & 144 N 16 (iii) Right sought to law 143 & 144 N 16 (iii) Right sought to law 143 & 144 N 16 (iii) Right sought to law 143 & 144 N 16 (iii) Right sought to law 143 & 144 N 16 (iii) Right sought to law 143 & 144 N 16 (iii) Right sou
(c) Possession must be actual
(c) Possession must be actual (d) Possession must be adequate in continuity, in publicity and in extent (e) Possession must be continuous (f) Possession must be in denial of title of true number (g) Possession must be one denial of title of true number (h) Possession must be open in denial of title of true number (h) Possession must be peaceful, open and continuous (i) Protests by owner and possession inspite of them are not necessary. (i) Right sought to be acquired must be one recognized by law (ii) Right sought to be acquired must be one recognized by law (iii) Right sought to be acquired must be one recognized by law (iii) Right sought to be acquired must be one recognized by law (iii) A few acts such as granting of lease, execution of mortgage are not sufficient (b) Acts must be scrutinized in the light of relationship between parties (c) Acts such as sub-letting, mortgaging, excavation etc., of a tank are evidence of adverse possession (d) Long possession and absence of proof of license or agreement between owner and occupier—Adverse possession may be inferred (e) Long possession far beyond statutory period and no payment of rent (ii) Mere auntournation of fish from tank may not necessarily
(c) Possession must be actual

268±	GENERAL	INDEX		
Adverse possession-Evidence	of-(Cont	d.)		
(g) Mutation in revenue	register of	son's name	is not asse	rtion
of hostile title to ster			5	A 142 & 144 N 96
(h) Mero user 15 not	•••		•••	A 142 & 144 N 96
(1) Sufficiency of-Other	illustration	S	•••	A 142 & 144 N 96
(j) Unregistered document	t may be re	ferred to ex	plain natu	re of
possession				A 142 & 144 N 96
-Ex-proprietary tonant-Clai	m as to-V	Vhetber can	be acquire	d by
adverse possession		•••		A 142 & 144 N 95
-Extent of right acquired				
(a) Adverse possessor gets	noly what	quondam or	wner bad :	A 142 & 144 N 51
(b) Adverse possessor gets	title only	to interest	be purpor	ts to A 142 & 144 N 95
proscribe for	•••	•••		
(c) Question depends on	animus 1	possidendi (of the ad	verse A 142 & 144 N 95
possessor	•••		•••	A 142 6 121.
Female limited ownerPoss	session of—	Whether ad	verse to re	A 141 N 153
-Fishery right - Evidence	of enter of a	···	parts of	river
adjoining part in dispute, is			pares or	A 142 & 144 N 96
Holder of life estate-Adver	SO TIOSSESSIO	n against		
(a) Not also adverse again:	st person ei	titled to suc	ceed life-e	state
bolder till latter's des	ith			A 143 & 122 A
(b) Suit for possession by	successor of	life-estate l	oolder - I	imi.
tation — Starting poi	nt			A 142 & 121
Husband and wife - Posse	ssion by ei	ther busban	d or wife	is on A 142 & 144 N 58
behalf of the other and not	adverse to	the other	•••	A 142 % 143 21
Inalienable property				. 1.
(a) Land not attached to a			service ca	n be A 142 & 144 N 61
acquired by adverse p	ossession			
 (b) Property attached to adverse possession 	service in	im cannot i	96 Ecdanter	A 142 & 144 N 61
(c) Right of occupancy car	onet he eco	nired by adv		
on lands granted on p	olice tenur	9	OZGO POUL	A 142 & 144 N 61
(d) Watan property—Who	ether can b	e acquired b		
	***		•••	pos. A 142 & 144 N 61
-1_Interruption of				A 142 & 144 N 73
(a) Abandonment by tresp	asser—Effe	ect	•••	A 142 & 131
(b) Abandonment or reling	tuishment l	y adverse po	ssessor-L	ımı-
tation ceases to run a	gainst true	nwner—No	act is neces	sary A 142 & 144 N 64
on his part	• •	:		
			oriod	A 142 & 144 N 64
			· period.	A 143 & 144 N 64 A 143 & 144 N 64
(m) Admission under	mietako nf	fact not suff	niont	A 143 & 144 N 64 A 142 & 144 N 64
(d) Attachment	IIII STATE III	race not bum	.010114	
(1) Attachment und	or S. 145 (Iriminal P.	O Prop	orty
in possession i	of trespasse	r — Attachi	nent does	not . 144 N 67
interrupt posses	sion of tres	DASSOL		V 142 m -
(ii) Attachment und	or Ss. 145 a	nd 146, Crin	ninal P. C.	A 142 & 144 N 67
Whether affects	adverse po	esession		A 124 W
(iii) Attachmont und	or S 146, C	riminal P. C		A.
(a) Property	in possessin	n_nf trespas	ser - Att	- AT
i ment will	interrupt	advorse poss	ession of b	res. A 142 & 144 N 67
passor	•••	•••	•	

(i) Attachment does not amount to dispossession of true owner A 14
(21) Remedy of true owner is suit for declaration

(b) Property in possession of true owner

-Limitation . .

(1v) Claim petition by adverse possessor rejected-No suit to establish his right filed within limitation (a) Adverse possessor, whether can plead that he was in adverse possession on date of order dismissing

Cr. P. C .- (Contd.)

A 142 & 144 N 67

A 142 & 144 N 67

in adverse possession on date of order dis	
his claim petition	A 142 & 144 N 67
(b) Adverse possessor, whether precluded from	n plead-
ing adverse possession from date of or	
missing his claim	A 142 & 144 N 67
(c) Attachment raised subsequently — Adve-	
sessor, whether precluded from pleading	
possession on date of order dismissing h	is claim
	A 142 & 144 N 67
(v) Property in possession of defendant attached b	w Cor.
ernment — Property subsequently restored to	
dant—Defendant's possession, whether interrup	
	A 142 & 144 N 67
(e) Decision of Revenue Officer or Court	
•	
sion of defendant	Λ 142 & 144 N 68
(ii) Mere registration of owner's name in Collectors	
not interrupt adverse possession	A 142 & 144 N 68
(iii) Order of Collector in boundary dispute under	
Bengal Survey Act, declaring parties to be in	posses.
sion - Whether amounts to dispossession of	of party
adversely affected	A 142 & 144 N 68
(iv) Whether interrupts adverse possession .	A 142 & 144 N 68
(f) Decree	11 112 6 111 11 00
(1) Decree in favour of third party against defer	
Third party obtaining possession in execution-	
roversed on appeal—Defendant's adverse pos	
whether interrupted	A 142 & 144 N 66
(n) Decree merely establishing plaintiff's right to	DOSSes-
sion-Whother interrupts adverse possession	. A 142 & 144 N 66
(iii) Plaintiff obtaining possession under decree -	Decree
reversed on appeal and possession restored to de	fendant
— Defendant's adverse possession is interrupte	
(iv) Whether interrupts adverse possession	A 142 & 144 N 66
(g) Discontinuance of possession by trespasser — Inter	
trespasser to return or not is immaterial .	A 142 & 144 N 64
(h) Effect	A 142 & 144 N 64
(i) No difference in principle between break in continuit	
by voluntary abandonment by wrongdoer and break	
by extraneous circumstances	A 142 & 144 N 75
(1) Re-entry by true owner	A 142 & 144 N 64
(1) Instances not amounting to effective re-entry	A 142 & 144 N 64

2000 OLABAH INDEX
Adverse possession-Interruption of-Re-entry by true owner-(Contd.)
(ii) Must be effective and more than formal A 142 & 144 N 64 (iii) What coestitutes re-entry A 142 & 144 N 64
(,,,
(k) Rovonuo salo - Rovonuo sale in 1891 uoder Bengal Revocue
Sales Act (11 of 1859)—Suit for possession by auctice-pur-
chasor—Defeedant claiming to be in adverse possession of
property sold since 1859 - Limitation ran from date of
salo A 142 & 144 N 74
(1) Submersion of land A 142 & 144 N 64
(1) Wroegdoor in possession before submersion — Adverse
possession is interrupted A 142 & 144 N 70
(m) Subsequent assertion of different title by defendant - Whe-
ther affects his adverse possession A 142 & 144 N 69
(n) Symbolical possession
(i) Delivory of
(a) Formal defect in each delivery proceedings—
Whether will arrest adverse possession of defen-
dant A 142 & 144 N 60
(b) Revenue sales—Auctice-purchaser given symbo-
lical possession—Suit for possession by auction-
purchaser—Limitation A 142 & 144 N 65
(c) Title acquired by defendant by prescription before
dolivery—Effect on—Suit for possession within twelve years of delivery harred A 142 & 144 N 65
there yours at animaly and a
(n) Delivery of, by defendant to plaintiff
(a) Defendant in actual possession of land—Suit by
plaintiff for possession—Starting point A 142 & 144 N 65
(b) Property in occupation of rysts—Deformant again
session—Starting point A 142 & 144 N 65
(iii) Delivery of, in execution—Actual delivery prescribed
by Civil Procedure Code as mode of delivery — Deli-
(iv) Delivery of, is equivalent to actual delivery A 143 & 144 N 65
(v) Delivery of, to decree-holder — Effect of, on rights of third party A 142 & 144 N 65
(vi) Delivery of, to decree-bolder or auction-purchaser —
Delivery operates as dispossession of defendant and puts an end to his adverse possession A 142 & 144 N 65
(o) Trespasser in possession dispossessed by person without title
(i) Disposession of trespasser, whether dispossession of true owner A 142 & 144 N 75
true owner A 142 0 22 1 1 55
(ii) Suit for possession by true owner—Limitation A 142 & 144 N

A 142 & 144 N 16 claiming adverse possession is immaterial --- Land in military cantonmeets-It cannot be acquired by adverse A 142 & 144 N 61s possession . . .

(p) Vis major - Effect is same as caused by voluntary abandon-

- Joint family-Members separate only in mess and not io estate-

-Knowledge of his defective title or absence of title by person

No adverse possession amongst them ...

A 142 & 144 N 64

A 142 & 144 N 85

Adverse possession—(Contd.)

___Landlord and tenant

(a) Adverse possession against tenant, whether adverse against

landlord ... A 142 & 144 N 86
(b) Encroachment by tenant on adjoining land belonging to land.

(b) Encrosement by tenant on adjoining land belonging to land

(c) Encroachment by tenant on adjoining land not belonging

(i) Tenant's possession is adverse to owner of such land

(n) Whether such possession entires to benefit of land.

lord ... A 142 & 144 N 59a

(d) Mere non-payment of rent does not create adverse posses.

(e) Tenancy right

(i) Tenancy cannot be acquired by prescription in Central

Provinces ... A 142 & 144 N 95
(ii) Whether can be acquired by adverse possession ... A 142 & 144 N 95

(f) Tenant dispossessed during continuance of lease by trespasser

Latter's possession is not adverse to landlord as long as

lease subsists ... A 142 & 144 N 86

(g) Tenant grazing cattle and cutting grass on adjoining waste

land of landlord—He cannot claim adverse possession merely

by such act ... A 142 & 144 N 59a
(h) Tenant holding over with landlord's consent dispossessed —

Trespasser's possession is adverse to landlord ... A 142 & 144 N 86
(i) Tenant under void lease dispossessed by third person — Pos-

session of such person is adverse to landlord ... A 142 & 144 N 86 (k) Tenant's interest can be acquired by adverse possession A 142 & 144 N 86 (k) Tenant's possession is not adverse to landlord ... A 142 & 144 N 59

(i) Third party collecting rents from tenant in assertion of his own right is in adverse possession of landhord's interest A 142 & 144 N 86.

Lices of inconcret by N-Recessary elements for

—Meaning of A 142 & 144 N 16 —Mere consent or acquiescence on part of true owner is immaterial

... A 142 & 144 N 16

(a) Alienation of minor's property void — Alienee taking possession—Remedy of minor is suit for possession—Limitation

A 142 & 144 N 77

(b) Guardian in possession of his property — Suit by minor or lunatic for possession—Limitation is governed by Art 144

... A 142 & 144 N 24 (c) Possession by de facto guardian of his property not adverse

(d) Possession of his property by guardian—Presumption that such possession is not adverso is rebuttable A 142 & 144 N 24

(e) Possession of his property by person in trust

(i) Possession is only as bailiff of person under disability A 142 & 144 N 24 (ii) Whether such person can make his possession hostile

after disability bas ceased A 142 & 144 N 24
(t) Possession of his property by stranger—Whether adverse A 142 & 144 N 24

2688 GENERAL INDEX Adverse possession-Minor or lunatio-(Contd.) (g) Possossion of his property commencing as guardian-Posses. sion continues to ho so even after minor attains majority: A 142 & 144 N (b) Possession of his property with guardian - Alienation to stranger purchasing bona fide-Stranger's possession adverse from date of entry (i) Property belonging to, in adverse possession of another-Whether can be adverse against minor or lunatic A 142 & 144 N (j) Right to extended period of limitation under Ss. 6 and 8: A 142 & 144 N —Mortgagor and mortgagee

(a) Adverse possession against mortgagee

(i) If adverse to mortgagor A 142 & 144 N (ii) Mortgage by conditional sale-Subsequent adverse possession against mortgagor does not affect mortgagee: A 142 & 144 N

(iii) Mortgage with default clause - Subsequent adverse possession against martgagor before default does not A 142 & 144 N affect mortgagee

(iv) Possession by mortgagor

(a) Mortgage deed stipulating that on default in payment by mortgagor, mortgagee entitled to take possession of mortgaged property - Default by mortgagor - Mortgagor'e possession subsequent to such default is adverse to mortgagee... A 142 & 144 N

A 142 & 144 N

A 148 N 4

A 148 N 4

A 148 N 6

Λ 148 N 9

A 148 N 7

A 148 N 4

(b) Right to possession of mortgagee harred by adverse possession by mortgager — Mortgagee, whether can sue on his mortgage

A 142 & 144 N 2 (c) Simple mortgage - Mortgagor's possession not A 142 & 144 N 2

adverse to mortgagee (vii) Simple mortgage

(a) Invalid lease by mortgagor after mortgage -Lessee's possession not adverse to mortgages: A 142 & 144 N 8 (b) Mortgaged property in possession of trespasser hefore mortgage - Adverse possession of tres-

passer continuing for 12 years - Trespasser's possession is also adverse to mortgagee... A 142 & 144 N 8 (c) Subsequent entry by trespasser on mortgaged property-Adverse possession continuing for 12 years -Mortgagee's right not affected ... A 142 & 144 N 6

(b) Adverse possession against mortgagor (i) Co-mortgagee redeeming another co-mortgagee - His possession does not become adverse against mortgagor: (ii) Mortgage by conditional sale-Invalid foreclosure pro-

ceedings - Mutation of names in mortgagee's favour -No adversn possessinn ... (iii) Mortgagen from vatandar continuing in possession after vatandar's death - Mortgagee's possession is adverse

to successors from date of death (iv) Mortgagen holding land as nwner to knowledge of mort. gagor-Mortgagee's possessinn is adverse to mortgagor:

(v) Mortgagen paying Government revenue and getting possession of mortgaged property by preventing operation of Ss. 56 and 57 of Bombay Land Rovenue Code -His possession is no behalf of mortgagor and not adverse

2000
dverse possession — Mortgagor and mortgagee — Adverse possession against mortgagor — (Contd.)
(vi) Person dispossessing mortgagee in possession—Whether
his possession adverse to mortgagor A 142 & 144 N 85
(vii) Person receiving rents and profits in assertion of hostile
title has adverse possession of equity of redemption
A 142 & 144 N 85
(viii) Possession of co-mortgagee paying off other co-mort-
gagees is not adverse to mortgagor A 142 & 144 N 34
(ix) Possession of mortgages
 (a) Decree that mortgage is satisfied — Mortgagee's possession subsequent to such decree is adverse
to mortgagor A 142 & 144 N 28
(b) Denial of existence of mortgage or assertion of proprietary title does not give adverse possession
to mortgagee A 142 & 144 N 28
(c) Equity of redemption sold to mortgages but sale
found to be void-Possession of mortgagee, whe-
ther becomes adverse from date of sale A 142 & 144 N 28
(d) Mortgage discharged by payment—Possession of mortgagee, whether adverse to mortgager A 142 & 144 N 28
(e) Mortgagee entitled to be in possession - Mort-
gagee's possession becoming adverse to mort-
gagor subsequently - Suit by mortgagor for
possession is governed by Art. 144 A 142 & 144 N 28
(f) Mortgagee entitled to possession — Mortgagee's
possession not adverse during subsistence of
mortgage A 142 & 144 N 28
(g) Mortgagee in possession of mortgaged property
without right — Possession is adverse to mort.
gagor A 142 & 144 N 28
(h) Mortgagee in possession without any right to
possession—Suit by mortgagor against mort.
gagee for possession - Suit is governed by
Art 142 A 142 & 144 N 28
(1) Nature of.—Character cannot be changed by tak-
ing settlement from landlord in his own name
A 142 & 144 N 28
(1) Person entering as simple kanomdar subsequently
taking invalid permanent kanom from uralan
- Kanomdar's possession is not adverse to
trust
(1) Simple mortgagee getting into possession by sale
— Sale set asido and mortgagee treated as
mortgagee in possession — His possession is not

adverse

Burden of proof

Burden of proof ...
(m) Usufructuary mortgage (1) Mortgagee agreeing to purchase property -Possession of mortgagee is out adverse to mortgagor thereafter . A 142 & 144 N 28

(1) Suit by mortgagor to recover mortgaged property - Mortgagee setting up adverse possession -

Lam. 169

A 142 & 144 N 28

A 142 & 144 N 28

(vii) Third person selling equity of redemption to mortgagee — Mortgagee's possession not

A 142 & 144 N

A 142 & 144 N

A 148 N

Adverse possession — Mortgagor and mortgagee — Adverse possession again mortgagor—Possession of mortgagea—Usufructuary mortgage—(Contd.)

(ii) Mortgagor selling mortgaged property to mortgagee, but mortgagee holding property only as mortgagee—Possession not adverse

to mortgagor

to mortgagor ...

adverse thereafter ... A 14
(x) Possession of mortgage under yold mortgage is adverse

(xi) Purchase in execution of one co-mortgager's interest-

Possession of mortgagee not adverse to other co.mort-
5a601
(xii) Simple mortgages entering into possession by virtue of
sale—Sale set aside—Mortgagee subsequently treated
as one in possession — His possession after sale is not
adverse to incregator ***
(xiii) Stranger getting into possession in collusion with
usufructuary mortgagee—His possession is not adverse to mortgagor
(xiv) Stranger paying off mortgage with knowledge and con-
sent of mortgagor—Limitation period under Art. 132 for
suit hy such person expiring — Subsequent possession of such person — Whether adverse to mortgagor A 148 N
(xv) Stranger paying off usuiructuary mortgagee and get-
ting possession.—Whether his possession adverse to mortgagor A 142 & 144 N S
(xvi) Stranger renewing usniructuary mortgage in assertion
of bis title to equity of redemption — Whether in adverse possession of equity of redemption A 142 & 144 N 85
(c) Mortgage deed containing clause, entitling mortgages to pos-
session in case of default in payment — Default in payment
made — Third person purchasing property in execution of
his money decree against mortgagor—Third person helieving bimself bona fide to be full owner — Third person's posses
bimself bona fide to be full owner — Third person's posses- sion is adverse to mortgagee A 142 & 144 N S
(d) Mortgage right—Whether can be acquired by adverse possess.
Of office
(a) Decree that person in possession of office has no title thereto,
whether interrupts running of time in favour of such person:
(h) Extent of interest to which person in such possession can A 124 N 6
progerihe
(c) Suit for possession of office—Adverse possession of defendant A 124 N 6
Whether necessary for applicability of Art. 124
- Of surface and sub-soil rights in land
(a) Evidence of long possession of surface by tenure holder from
zamındar in India is not evidence of adverse possession of and a sub-soil A 142 & 144 N 54
snb-soil (b) Where minerals are involved, adverso possession of one strata 142 & 144 N 54
(b) Where minerals are involved, adverso possession of one strata is not necessarily adverse possession of another strata: A 142 & 144 N 54
not appropriate proposition of minorial

Adverse possession—(Contd.)			
Owner having absolute title to propertyAdverse possessor cl	aım.		
ing only limited interest—Determination of such interest	est—		
Right of true owner to possession will again come	ınto		
operation	• • •	S 2	8 N 6
Permissive possession			
(a) Building by tenant of bouse in abadi of village and occ	upy.		
ing it for 12 years is not sufficient to establish titl			
adverse possession against zamindar	A 142		
(b) Burden of proof as to permissive nature of possession:		& 144	N 56
(c) Fact that licensee has improved buildings on land or			
replaced erections does not confer title on him . (d) Not adverse to true owner	A 142 A 142		
(d) Not adverse to true owner —Plea of	A 142	æ 144	N 96
(a) Defendant setting up title and pleading limitation—He			
succeed on limitation even if he fails to prove title:	A 140	2 144	N 07
(b) It should be expressly pleaded or at least as an altern		17.7.7	14 91
ground	A 142	å- 1 <i>44</i>	N 07
(c) Land in possession of defendant not identified with lar	id in		11 01
suit-Plea of limitation by adverse possession mus			
rejected	A 142	& 144	N 53
(d) Plea may be raised by Court suo motu it admitted fact			
sufficient to raise it	A 142	& 144	N 97
(e) Suit on ground of title—Failure to prove title—Wh plaintiff can rely on title by adverse possession:	A 142	b 144	17 OF
(f) Whether can be taken in first appeal	A 143	& 144 & 144	N 07
(g) Whether can be taken in second appeal	A 143		
Possession by Hindu female			., .,
(a) Alienation by female — Alience's possession not ad	VATSA		
during female's lifetimo	A 142	& 144	N 19
(b) Female ontering into possession without title — Pres	ump.		
tion	A 142	& 144	N 19
(c) Female entitled only to maintenance and not to posses —Possession is adverse			** **
—Possession is adverse (d) No right to be in possession	A 142	N 144	N 19
(1) Possession is adverse	A 142	& 144	N 19
(ii) Suit for possession against her or her al	lenee	~ ~ ~ ~ ~ ~	21 20
is governed by Art 142	A 142	ል 144	N 19
(e) Possession in lieu of residence and maintenance—Posse			
continued after death of last male bolder but not as h	eir—		
Possession is not adverse till possession demande	d by A 142	6.144	NT 10
(i) Possession only in hea of maintenance—Purchases by for		W 144	N 19
out of savings and purchased property kept separate-	Pos-		
session does not become adverse	A 142	& 144	N 19
(g) Possession started as heiress - Female subsequently	dis-		
entitled to retain possession-Possession becomes ad			
	A 142	& 144	N 19
(h) Possession without right but under arrangement with			
members—Possession is not adverse	A 142	a 144	N 19
(i) Property inherited by her-Possession not adverse to r			
stoners	A 142	æ 144	N 19

Adverse possession-(Contd.) ---Possossion by holder of life-estate (a) Alienation by bolder-Wbether adverse to person ontitled to possession after him A 142 & 144 N 79 (b) Moro assertion that possession is held as absolute owner-Not sufficient to acquire title by adverse possession: A 142 & 144 N 23 (c) Possession is not adverse to reversioners A 149 & 144 N 23 Possession by manager of one of co-owners is not adverse to othors A 142 & 144 N 35 Possession cannot be adverse to person not baving present right to possession A 142 & 144 N 78 Possession in lieu of dower (a) Possession obtained peaceably and without force or fraud-Consent of husband's hoirs is not necessary ... A 142 & 144 N 21 (b) Possession obtained without force or fraud is not adverse to other heirs A 142 & 144 N 21 (c) Possession gives ber only right of rotention and no title: A 142 & 144 N 21 (d) Possession lost and property beld by stranger for more than 12 years—Suit for possession by boirs barred A 142 & 144 N 21 (e) Possession not adverse to person entitled to property after A 142 & 144 N 23 his death (f) Suit by heirs against widow for immediate possession-Decree on condition that dower was to be paid within certain time-Non-payment does not confer absolute estate on widow-Plaintiffs' right to claim possession at any future A 142 & 144 N 21 time not extinguished (g) Widow dispossessed by heir of husband-Remedy of widow is suit under S. 9, Specific Relief Act, and not one for posses. A 142 & 144 N 21 sion based on title ---Possession in lieu of maintenance-Defondant in possession under a grant for maintenance from plaintiff - Decree in favour of plaintiff for resumption of grant-Defendant continuing in possession for 12 years after such decree - Suit for possession by A 142 & 144 N 23 plaintiff is not maintainable... -Possession of Hindu copareener convorted to another faith is not A 142 & 141 N 35 advorse to other members of family ... -Possession of insolvent-Whother adverse to Official Receiver or A 142 & 144 N 25 Assignee A 142 & 144 N 63 Possession of owner—Whether can be adverse to himself: Possession of part, not sufficient to constitute adverse possession A 142 & 144 N 19 of whole Possession of person who could not advance hostile title under law A 142 & 144 N 55 cannot be adverse to true owner -Possession of Receiver (a) Property kept derelict in absence of heirs of deceased owner from the place-Possession taken by Court official-F sion is not adverse to person rightfully entitled: (b) Rival claimants to property

(i) Possession takon by Official Receiver-Po Receiver is dispossession of wrongdoer in at the time of appointment ... (ii) Receiver appointed by Conrt-Possession of is on behalf of heir ultimately found entitled :

20

4

GENERAL INDEX Adverse possession—(Contd.) —Possession of wrongdoer (a) Must be actual A 142 & 144 N 53 (b) When adverse—Necessary elements A 142 & 144 N 53 ----Possession on plaintiff's behalf--Possession by constructive trustee : S 10 N 28 Possession under benami document—Not adverse at inception: A 142 & 144 N 60 —Possession under invalid transaction (a) Alienation in contravention of S 3, Bhagdari Act, 1862 · A 142 & 144 N 60 (b) Alienation in contravention of S. 8 of Regulation 25 of A 142 & 144 N 60 1802 (c) Grant in contravention of S. 12-A, Chota Nagpur Encumbered Estates Act A 142 & 144 N 60 (d) It is adverse to true nwner A 142 & 144 N 60 A 142 & 144 N 60 (e) Lease granted by unauthorized person or void lease (f) Only right purported to be transferred is acquired A 142 & 144 N 60 (g) Sale void on ground of immoral consideration or for want of lawful consideration ... A 142 & 144 N 60 (h) Transfer by person not entitled to the property A 142 & 144 N 60 (1) Transfer for life-Possession of legal representative of trans-A 142 & 144 N 60 feree is adverse (1) Transfer good during lifetime of transferor but void beyond his lifetime -Possession is adverse after bis lifetime ... A 142 & 144 N 60 (k) Transfer of common property by one of several co-owners A 142 & 144 N 60 A 142 & 144 N 60 (1) Unregistered deed of gift or void gift (m) Void legacy A 142 & 144 N 60 (n) Void sale or unregistered sale-deed... A 142 & 144 N 60 (o) Void trust deed A 142 & 144 N 60 ••• A 142 & 144 N 60 (p) Void usufructuary mortgage ... -Possession under mistake (a) A and B in joint possession of A's property under mistaken helief that property belongs to both—B's possession adverse to A's claim for property as his separate and after 12 years A 142 & 144 N 52b property becomes joint property ... (b) A enters into possession of property of B bonestly believing it to be his own-A's possession is advorse to B A 142 & 144 N 52b (c) If can be adverse-Illustrative cases A 142 & 144 N 52b (d) Mistake by both parties-Possession of person claiming right but having no title, adverse to true owner ... A 142 & 144 N 52b (e) True owner under mistake, ignorant of his right to property trespassed upon-Trespasser's possession is adverse to true A 142 & 144 N 52b

-Possession under temporary arrangement between members of family (a) Defendant in possession under agreement to surrender land to plaintiff-Defendant's possessing is not adverse to plaintiff at the time of snrrender, but becomes adverse on refusal 4 N 20 to surrender (b) Plaintiff transferring property to defendant collusively to save it from creditors-Defendant's possession is not adverse

to plaintiff (c) Property worked in turns by mntnal arrangement-N

adverso possession ... A 142 & 1 ...

Adverse possession — Possession nnder temporary arrangement between members of family — (Contd.)	
(d) Suit by Mahomedan beir for recovery of his share—Dispute	
agreed to be referred to arbitration.—No reference actually	
made but certain fixed sum out of profits of estate continued	
to be paid to heir for several years—Heir held acquired no	
title to alleged share by adverso possession A 142 & 144 N 20	
Possession under transfer which subsequently becomes invalid-	
Suit against transfered for possession - Limitation - Starting	

... ... A 142 & 144 N 60a point -Possession under voidable transfer-Possession is not adverse till

A 142 & 144 N 60 transfer is set aside ... ——Question of

A 142 & 144 N 98 (a) Inference as to adverse possession is one of law A 142 & 144 N 93 (b) It is a mixed question of law and fact

Religious endowment

(a) Alienation by manager of office — Adverse possession of alience begins from date of taking possession under aliena. A 142 & 144 N 49

(b) Alience from co-trasteo of-Suit against, by other trustee for A 142 & 144 N 51 property alienated-Limitation-Starting point (c) Dismissed manager setting up right in himself repudiating

claim of persons who appointed bim - Adverse possession starts from date of repudiation

(d) Joint shebuts dividing debutter property between them and applying profits thereof to their own uso-Their possession A 142 & 144 N 50 is not adverse to institution

(e) Mahant's possession is not adverso to founder unless founder's A 142 & 144 N 46 title is repudiated ... (f) Manager of - Cannot acquire title by adverse possession to

A 142 & 144 N 46 endowment property ... (g) Person who never accepted office of manager can acquire

title to endowed property by adverse possession ... A 142 & 144 N 49 (h) Stranger can acquire by adverso possession property of reli-A 142 & 144 N 49

gious endowment (1) Stranger entering into possession of property claiming to be

manager

(1) He will acquire right of manager by twelve years' ^ A 142 & 144 N 49 adverse possession (ii) His possession not adverse to institution but against A 142 & 144 N 49

(1) Transfer of property by co-shebat - Alience coming as cosharer of other co-shebaits-His possession not adverse to other co-shebits in absence of proof of ouster ... A 142 & 144 N 51

---Religious institution (a) Hindu idol or Muhammadan mosque as material property can be acquired by adverse possession as material property & 144 N 49

(b) Religious institutions of Hindus, Muhammadans or Buddhists A 142 & 144 N 49 can acquire property by adverse possession ... —Right to worship in temple

(a) Acquisition of prescriptive right to perform miner worship does not carry with it right in perform major worship: A 143 d 144 N 48

(b) Right can be acquired by adverse possession ...

GENDRAL TRADES	2050
Adverse possession—(Contd.) ——Rights not recognized by law	
(a) Right of fishery by a member of public in a non-tidal river cannot be acquired by adverse possession A 142 & 144	N 61b
(b) Status of coparcenary cannot be acquired by adverse pos- session A 142 & 144	
Starting point	21 020
(a) Ouster by owner of person in adverse possession — Latter obtaining decree and dispossessing owner—Adverse possession of such person starts mily from dispossession under decree	4 N 64
(b) Property under usufructnary mortgage first sold to A and then to B—B redoems and enters into possession—His possession is adverse to A from the date of entering into	11101
possession and not from the date of sale in his favour A 142 & 144	N 52a
Suit for declaration of title acquired by	
(a) Onus is on plaintiff A 142 & 14 (b) Plaintiff must prove all qualities of adverse possession A 142 & 14	4 N 87
—Tacking of	1 1 01
(a) Auction-purchaser deriving title from judgment-debtor—Pos- session of both can be tacked as against private vendee from	
judgment-debtor A 142 & 14 (b) Character of possession of different persons, whether should	4 N 92
be same A 142 & 14	4 N 92
(c) Devisce of trespasser can tack on period of devisor's posses-	
sion to that of his own	
(d) Essential element for A 142 & 14 (e) Government taking possession of disputed land and subse-	4 N 92
quently delivering to B-Land found to belong to A-Suit	
by A against B — B cannot tack on his adverse possession to	
possession of Government A 142 & 14 (f) Independent trespassers cannot tack on the period of their	4 N 92
adverse possession for computing period of limitation under	
Art 144 A 142 & 14	4 N 92
(g) Mortgagee in adverso possession of fishery adjoining mort- gaged property—After redemption mortgagor continues in	
adverse possession of same — Mortgagor can tack on his adverse possession to that of mortgageo A 142 & 14	1 N 92
(b) Period of possession under title cannot be tacked on to	
period of possession without titlo	1 N 92
passers does not arise in suit under Art. 142 A 142 & 14	N 92
(j) Submerged land belonging to A taken possession of by Government on re-formation and afterwards delivered to B—B	
cannot tack on his adverse possession to that of Govern.	
(k) Succession of wrong-doers claiming through one another can	
tack on the period of their adverse possession A 142 & 14: (1) Successive trustees can tack on their adverse possession if	
their title is from same source A 142 & 14:	N 93
(a) Nature of S	28 N 6
(b) Person in adverse possession of land normally acquires title	
both to surface and sub-soil A 142 & 14	N 54

T1	
Adverse possession — (Contd.)	
- Title by adverse possession - Whether can be obtained a	
	oeteeo years
where co-trustees are entitled to manage trust by ro	tation, whe-
ther adverse against co-trustees excluded from ma-	oagement of
trust	A 124 N 9
Veodor and vendee	
(a) Sale of immovable property	
(i) Illustrative cases	A 142 & 144 N 523
(11) Veodor continuing in possession—Veodor	s possession
is adverse to vendee from date-of sale,	though pur-
chase money is not paid	A 142 & 144 N 52a
(h) Sale of immovable property under usufructuary	mortgage-
No adverse possession by vendor against vend	lee till pro-
perty is redeemed and possession obtained by ve	endor: A 142 & 144 N 023
does not amount to adverse possession	A 142 & 144 N 15
What does not constitute	
(m) Autoritists () () () () () ()	42 & 144 N 53
	42 % 141 11 01
•	A 142 & 144 N 11
eion	144
(c) Mere acts of trespass without intent to possess do	A 142 & 144 N 11
tute adverse possession	4
(d) Mere acts of user without ansmus possidendi do	A 142 & 144 N 11
tute adverse possession (e) Mere animus possidendi without actual user is no	· M.I
(e) hiere animus possidenai without actual user is no	A 142 & 144 N 11
to constitute adverse possession (f) Mere cotry in Revenue Records as Government	
does not transfer possession to Government	Waste land A 142 & 144 N 11
(g) Mere payment of water and house tax by occupi	
Dot sufficient	er of house A 142 & 144 N 16
(h) Possession referable to lawful title is not adverse	A 142 & 144 IV 20
(i) Sporadic invasion by person without title on	
does not amount to possession	U 715
(1) Use of vacant land by municipality for depositing	refuse does
not amount to adverse possession	A 142 to
(k) Womao's name entered in village record because r is away—Her possession is not adverse to male of	male owoer
is away—Her possession is not adverse to male o	Noer A 142 & 144 N 11
(i) Other musicality cases	A 143 & 143
What is	3
(a) Permissive possession of office of defendant—Wheth	ner adverse A 124 N 6
possession	
(h) Possession of bailee after expiry of period for w	hich goods A 49 N 8
were bailed to him	A 121 N 2
	•••
Advocate	A 84 N 2
Suit by, for costs-Limitation	
Affidayit	
Filment or at my at a ment of the av	ward made
. lou	rt-Whe- A 159 N 2
	W 102 1

Age					
Calculation of Whether	should be o	alculated	from date o	of birth	
or date of conception	•••	•••		•••	S 6 N 24
Agency					
-Advance of loan and agen	cy—Accon	at consis	ing of adva	inces of	
loan on one side and age account—Suit for—Limit ——Contract of—Suits relating	ation				A 85 N 5
residuary Art 120			***		A 120 N 19
Registered contract of Su					
whether one for compensa ——Termination of	tion for br	each of r	egistered co	ntract :	A 116 N 12
(a) By agent renouncing			•••	•••	A 89 N 16
(b) By completion of bus	siness of ag	ency	•••	•••	A 89 N 17
(c) By death of agent	. •••	•••	•••	•••	A 89 N 19
(d) By death of principa		. •••	•••	•••	A 89 N 18
(e) By revocation of age		ty	•••	***	A 89 N 15 A 89 N 14
(f) Modes of	•••	•••	•••	•••	V 09 IV 14
Agent					
Deceased agent					
(a) Suit against legal rep	resentative	for accou	ınts—Limit	ation:	A 62 N 11
(b) Suit against legal re			sconduct or	neglect	
of deceased agent-	Maintainab	ility		•••	A 90 N 5
(o) Suit against legal r	epresentati	ve by p	incipal for	money	A 62 N 11
received by decease	d agent for	use of pri	icibai—rim	tration.	A 02 N 11
(d) Suit against represe agent—Suit by prin	ntative for	accounts	ter Limitat	ion	A 89 N 10
	страт—маг	atama on i	•у—шишка		11 05 11 10
Del credere agent					A 89 N 9
(a) Suit by principal—L (b) Suit for recovery of p	imitation	le cold by	egant and	bien to	A ou M y
by purchaser, whot	her suit for	compand	ation for h	each of	
contract	***	compone		***	A 115 N 10
(c) Who is	***		•••	•••	A 89 N 9
Duty of-To render proper		•••	•••		A 89 N 21
-Liability of		•••			
(a) Agent employed join	tly by more	tban on	e principal-	-Agent,	
whether bound to a		ırately	•••	•••	A 89 N 21
(b) Liability to principal		•••	• •••		A 89 N 2
(c) Period for which age				rincipal	1 00 17 00
in suit for accounts			•••	6.0	A 89 N 22 N 14 F N 12
Lien-Excreise of-Time I	imit, it exis	ts	•••	53.	N 14 F N 12
(a) What is					A 90 N 2
(b) When actionable	•••	•••	•••		A 90 N 2
Neglect	•••	•••	•••	•••	11 00 11 2
(a) What is	•••				A 90 N 2
(b) When actionable	•••	•••			A 90 N 2
Possesion of Is that of p	rincipal			A 149	& 144 N 57
Signature by-Agent duly	autborized	in that b	ehalf — Suf	ficiency	
of, for purposes of S. 19	· ···			•••	1 .00
Son of-Suit against, for a	ccountsL	imitation	•••	•••	A 120

2698	GENERAL INDEX	
Agen	t_(Contd.)	
•••	Suit against	
	(a) By legal representative of principal-Suit for accounts due to	
	deceased principal-Limitation	A 89 N 11
	(b) By principal	
	(1) Period for which agent is hible to render accounts	A 89 N 23
	(ii) For accounts-Agency, when terminates A 89	N 14 to 19
	(ni) For accounts-Burden of proof	A 89 N 20
	(iv) For accounts-Limitation-Starting point	A 89 N 12
	(v) For balance due out of moneys received by agent after	
	deducting all legitimate exponses and allowances -	A 62 N 10
	Limitation	
	(vi) For money belonging to principal and received by agent after termination of agency—Limitation	A 63 N 10
	(vii) For moneys collected and retained by agent—Limita-	
	tion	A 57 N 3
	(viii) For moneys received by agent for principal under	
	circumstances which make it the agent's duty to pay	
	over to principal immediately the money is received	A 62 N 10
	-Limitation	A 05 11 41
	(ix) For moveable property received by agent and not	
	accounted for Limitation Applicability of Art. 89	A 89 N 3
	accounted for Limitation A 69); A 89 N 2
	() 75	
	(a) Limitation—Starting point: A 90; A 90 N	: A 90 N a
	(b) Suit against director of company-Limitation :	
	(c) Suit ogainst lambardar—Limitation	A 90 N 8
	(xii) For recovery of moveable property received by agent	•
	and not accounted for—Suit where there is express	A 69 N 3
	and not accounted to The table	Y PA M 2

(xiv) For specific sum found due from agent after taking of accounts-Limitation ••• (xv) Suit for accounts by members of divided Hindu family against member in whose hands portion of estate is left for management-Limitation applicable (xvi) To enforce charge on immovable property created to secure moneys which might be found due from agent -Limitation

(xin) For recovery of sums misappropriated by agent-

...

Limitation

... . .

A 89 N 3

A 89 N 3

A 59 N 8

A 89 N 2

A 89 N 13 A 120 N 19

A 2 N 3

(xvii) What constitutes demand and refusal of accounts within Art. 89-Illustrative cases (c) For recovery of account papers-Limitation

(d) For damages for negligence of duty under onactment.-Limitation applicable, whether same as applicable to suit for doing or omitting to do act in pursuance of enactment

(e) For neglect or misconduct.—Suit against bank clerk in charge of savings bank account for moneys paid out by his fraud-A 90 N 3 Limitation •••

(b) Suit to enforce obligation under S 222, Contract Act—Limitation Trespass by—Whether enures to benefit of principal A 142 & 144 N 57 Who is (a) Bank clerk in charge of savings bank accounts, whether agent: A 99 N 3 (b) Director of company, whether agent A 99 N 3 (c) Lambardar, whether agent of cosharers of village A 90 N 3 Agent and Principal — Use by agent of money belonging to one principal for benefit of other—Suit by former against latter for recovery of money—Limitation A 120 N 19 Goods sold by agent—Suit by agent to recover loss—Limitation: A 61 N 15 Relationship of Relationship between brothers where after partition one of (a) Relationship between brothers where after partition one of them is recovering outstandings originally due to joint			
(a) Suit against principal to recover money paid in respect of habilities incurred on principal's hohalf—Limitation A 61 N 12 (b) Suit to enforce obligation under S 222, Contract Act—Limitation A 142 & 144 N 57 Who is (a) Bank clerk in charge of savings bank accounts, whether agent A 180 N 3 (c) Director of company, whether agent A 190 N 3 (e) Lambardar, whether agent of co-sbarers of village A 90 N 3 Agent and Principal A 190 N 3 Agent and Principal A 190 N 3 Agent of two principals—Use by agent of money belonging to one principal for benefit of other—Suit by former against latter for recovery of money—Limitation A 120 N 19 Goods sold by agent—Suit by agent to recover loss—Limitation A 61 N 15 A 62 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N 9 A 126 N	Agent-(Contd.)		
Inhibitus incurred on principal's hehalf—Limitation (b) Sut to enforce obligation under S 222, Contract Act—Limitation (ation Trespass by—Whether enures to benefit of principal A 142 & 144 N 57 — Who is (a) Eask clerk in charge of savings bank accounts, whether agent: A 89 N 7 (b) Director of company, whether agent A 99 N 3 (c) Lambardar, whether agent of co.sharers of village A 90 N 3 Agent and Principal A 90 N 3 Agent and Principal Agent of two principals—Use by agent of money belonging to one principal for benefit of other—Sut by former against latter for recovery of money—Limitation A 61 N 15 Goods purchased for principal—Principal's default in payment—Goods sold by agent.—Suit by agent to recover loss—Limitation A 61 N 15 Goods sold by agent.—Suit by agent to recover loss—Limitation	——Suit by		
Trespass by—Whether enures to benefit of principal A 142 & 144 N 57 Who is (a) Bank clerk in charge of savings bank accounts, whether agent: (b) Director of company, whether agent A 90 N 3 Agent and Principal Agent and Principal Agent of two principals—Use by agent of money belonging to one principal for benefit of other—Suit by former against latter for recovery of money—Limitation and of them is recovering outstandings originally due to joint family—Nature of (b) Relationship between brothers where after partition one of them is recovering outstandings originally due to joint family—Nature of (c) Relationship between cosharers some of whom are realizing rents of joint immovable property for division among other cosharers—Nature of			A 61 N 15
-Trespass by—Whether enures to benefit of principal A 142 & 144 N 57 N 10 N 10 N 10 N 10 N 10 N 10 N 10 N 1		mi-	A 83 N 4
Who is (a) Bank clerk in charge of savings bank accounts, whether agent: (b) Director of company, whether agent		A 142	
(b) Director of company, whether agent (c) Lambardar, whether agent of co-sharers of villago A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90			A 89 N 7
Agent and Principal Agent of two principals—Use by agent of money belonging to one principal for benefit of other—Suit by former against latter for recovery of money—Limitation —Goods purchased for principal—Principal's default in payment—Goods sold by agent—Suit by agent to recover loss—Limitation —Relationship of (a) Relationship between brothers where after partition one of them is recovering outstandings originally due to joint family—Nature of (b) Relationship between obshares some of whom are realizing rents of joint immovable property for division among other coshares—Nature of —Same agent acting for two principals—Money of one principal lent to another by agent—Suit for recovery of loan—Suit against principal receiving loan—Limitation Agra Tenancy Act —Appeal under—Appeal to District Judge against decree of Rovenue Court—Limitation Agra Tenancy Ket —Appeal under—Appeal to District Judge against decree of Rovenue Court—Limitation Agreement —Void agreement—Money paid under—Suit for—Limitation Allien nemay—Suit prevented by outbreak of war between alien's mother country and Great Britain—Suspension of limitation —Plaintiff alien provented from suing on account of outbreak of war —Cause of action, if susponded Allien nemay—Suit by — Suit as legal representative of deceased person—Limitation A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5	(a) Bank clerk in charge of savings bank accounts, whether age		A 90 N 3
(c) Lambardar, whether agent of co-sbarers of village Agent and Principal Agent of two principals—Use by agent of money belonging to one principal for benefit of other—Suit by former against latter for recovery of money—Limitation: Goods purchased for principal—Principal's default in payment—Goods sold by agent—Suit by agent to recover Inso-Limitation: —Relationship of (a) Relationship between brothers where after partition one of them is recovering outstandings originally due to joint family—Nature of —Same agent acting for two principals—Minory of one principal lent to another by agent—Suit for recovery of lean—Suit against principal receiving lean—Limitation —Same agent acting for two principals—Money of one principal lent to another by agent—Suit for recovery of lean—Suit against principal receiving lean—Limitation Agra Tenancy Act —Appeal under—Appeal to District Judge against decree of Rovenue Court—Limitation Agreement Void agreement—Money paid under—Suit for—Limitation Allien enemy—Suit prevented by outbreak of war between alien's mother country and Great Britain—Suspension of limitation Plaintiff alien proverted from suing on account of outbreak of war —Cause of action, if suspended Allien enemy—Suit prevented from suing on account of outbreak of war —Cause of action, if suspended Allien and property—Alienation by father—Suit for setting asido (a) By adopted son,,,,,,,	(b) Director of company, whether agent		A 90 N 3
Agent and Principal Agent of two principals—Use by agent of money belonging to one principal for benefit of other—Suit by former against latter for recovery of money—Limitation Goods purchased for principal—Principal's default in payment—Goods sold by agent—Suit by agent to recover loss—Limitation: Relationship of (a) Relationship between brothers where after partition one of them is recovering outstandings originally due to joint family—Nature of (b) Relationship between cosharers some of whom are realizing rents of joint immovable property for division among other cosharers—Nature of Same agent scting for two principals—Money of one principal lent to another by agent—Suit for recovery of lean—Suit against principal receiving lean—Limitation Agra Tenancy Act Appeal under—Appeal to District Judge against decree of Rovenue Court—Limitation Suit under—S 14, Lim. Act applies You'd agreement—Money paid under—Suit for—Limitation A62 N 9 A152 N 2a S2 N 3 A62 N 9 A152 N 2a S2 N 3 A63 N 12 A154 N 25 A155 N 3 A156 N 3 A156 N 3 A156 N 3 A156 N 3 A156 N 3 A156 N 3 A156 N 3 A156 N 3			A 90 N 3
A 120 N 19 A 20 N 19			
principal for benefit of other—Suit by former against latter for recovery of money—Limitation		one	
Goods purchased for principal—Principal's default in payment Goods sold by agent—Suit by agent to recover loss—Limitation: —Relationship of (a) Relationship between brothers where after partition one of them is recovering outstandings originally due to joint family—Nature of (b) Relationship between oshaters some of whom are realizing rents of joint immovable property for division among other coshares—Nature of —Same agent acting for two principals—Money of one principal lent to another by agent—Suit for recovery of lean—Suit against principal receiving lean—Limitation —Appeal under—Appeal to District Judge against decree of Rovenue Court—Limitation —Suit under—S 14, Lim. Act applies —Alien enemy—Suit prevented by outbreak of war between alien's mother country and Great Britain—Suspension of limitation —Plaintiff alien provented from suing on account of outbreak of war —Cause of action, if suspended —Allen enemy—Suit by—Suit as legal representative of deceased person—Limitation —Ancestral property—Alienation by father—Suit for setting aside (a) By adopted son —A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5	principal for benefit of other-Suit by former against latter	for	A 100 N 10
Goods sold by agent—Suit by agent to recover loss—Limitation: Relationship of (a) Relationship between brothers where after partition one of them is recovering outstandings originally due to joint family—Nature of (b) Relationship between cosharers some of whom are realizing rents of joint immovable property for division among other cosharers—Nature of Same agent acting for two principals—Money of one principal lent to another by agent—Suit for recovery of lean—Suit against principal receiving lean—Limitation Agra Tenancy Act —Appeal under—Appeal to District Judge against decree of Rovenue Court—Limitation —Suit under—S 14, Lim. Act applies —Vold agreement—Money paid under—Suit for—Limitation Alien enemy—Suit prevented by outbreak of war between alien's mother country and Great Britain—Suspension of limitation —Plaintiff alien provented from suing on account of outbreak of war —Cause of action, if suspended Allen enemy—Suit by—Suit as legal representative of deceased person—Limitation Allen anemy—Suit property—Alienation by father—Suit for setting asido (a) By adopted son	Goods purchased for principal Demoiral's default in naumon	٠	A 120 1 15
Relationship of (a) Relationship between brothers where after partition one of them is recovering outstandings originally due to joint family—Nature of (b) Relationship between coshaers some of whom are realizing rents of joint immovable property for division among other coshaers—Nature of			A 61 N 15
(a) Relationship between brothers where after partition one of them is recovering outstandings originally due to joint family—Nature of		,	22 02 27 20
them is recovering outstandings originally due to joint family—Nature of		of	
family—Nature of (b) Relationship between cosharers some of whom are realizing rents of joint immovable property for division among other cosharers—Nature of —Same agent acting for two principals—Money of one principal lent to another by agent—Sut for recovery of loan — Suit against principal receiving loan—Limitation Agra Tenancy Act —Appeal under—Appeal to District Judge against decree of Rovenue Court—Limitation —Suit under—S 14, Lim. Act applies —Suit under—S 14, Lim. Act applies —Sout under—Sit, prevented by outbreak of war between alien's mother country and Great Britain—Suspension of limitation —Plaintiff alien provented from suing on account of outbreak of war Leave of action, if suspended Allien enemy—Suit by—Suit as legal representative of deceased person—Limitation Allientation	them is recovering outstandings originally due to in	int	
(b) Relationship between cosharers some of whom are realizing rents of joint immorable property for division among other cosharers—Nature of Same agent acting for two principals—Money of one principal lent to another by agent—Suit for recovery of loan—Suit against principal roceving loan—Limitation Agra Tananoy Act —Appeal under—Appeal to District Judge against decree of Rovenue Court—Limitation —Suit under—S 14, Lim. Act applies —Note agreement—Money paid under—Suit for—Limitation Alien enemy—Suit prevented by outbreak of war between alien's mother country and Great Britain—Suspension of limitation —Plaintiff alien provented from suing on account of outbreak of war —Cause of action, if susponded Allen enemy—Suit by—Suit as legal representative of deceased person—Limitation Allen enemy—Suit property—Alienation by father—Suit for setting asido (a) By adopted son,,,,,,,	family—Nature of		A 62 N 9
Cosharers—Nature of Same agent acting for two principals—Money of one principal lent to another by agent—Suit for recovery of loan — Suit against principal receiving loan—Limitation Agra Tenancy Act —Appeal under—Appeal to District Judge against decree of Rovenue Court—Limitation —Suit under—S 14, Lim. Act applies —Void agreement—Money paid under—Suit for—Limitation Alien enemy—Suit prevented by outbreak of war between alien's mother country and Great Britain—Suspension of limitation —Plaintiff alien provented from suing on account of outbreak of war Limitation Allen enemy—Suit by —Suit as legal representative of deceased person—Limitation Allen enemy—Suit by —Suit as legal representative of deceased person—Limitation Allen enemy—Suit by —Suit as legal representative of accounted and person—Limitation A 126 N 3 A 126 N 3 A 126 N 3 A 126 N 3 A 126 N 3	(b) Relationship between cosharers some of whom are realize	ing	
Same agent acting for two principals—Monoy of one principal lent to another by agent—Suit for recovery of loan — Suit against principal roceving loan—Limitation	rents of joint immovable property for division among of	her	
to another by agent—Suit for recovery of lean — Suit against principal receiving lean—Limitation	cosbarers—Nature of	•••	A 62 N 9
principal receiving lean—Limitation A 62 N 31 Agra Tenancy Act Appeal under—Appeal to District Judge against decree of Rovenue Court—Limitation So 10 N 32 Agreement So 10 N 32 N 32 Agreement You agreement—Money paid under—Suit for—Limitation A 62 N 12 Allien enemy—Suit prevented by outbreak of war between alien's mother country and Great Britain—Suspension of limitation So 9 N 4 —Plaintiff alien provented from suing on account of outbreak of war —Cause of action, if suspended So 9 N 11 Allien enemy—Suit by Suit as legal representative of deceased person—Limitation So 6 N 3 Allienation Allienation A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 3 A 126 N 5 A 126 N 3			
Agra Tenancy Act Appeal under—Appeal to District Judge against decree of Rovenuc Court—Limitation Suit under—S 14, Lim. Act applies S 29 N 3 Agreement Void agreement—Money paid under—Suit for—Limitation Allien enemy—Suit prevented by outbreak of war between alien's mother country and Great Britain—Suspension of limitation —Plaintiff alien provented from suing on account of outbreak of war —Cause of action, if suspended Allien enemy—Suit by —Suit as legal representative of deceased person—Limitation Allien and —Suit —Suit as legal representative of deceased person—Limitation Allien and —Suit —Suit as legal representative of deceased person—Limitation Allien and —Suit —Suit as legal representative of deceased person—Limitation Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Allien Alli		nst	1 CO N 91
Court—Limitation —Suit under—S 14, Lim. Act applies		•••	V 65 N 91
Court—Limitation			
— Sut under—S 14, Lim. Act applies			
Agreement — Money paid under—Suit for—Limitation A 62 N 12 Alien enemy—Suit prevented by outbreak of war between alien's mother country and Great Britain—Suspension of limitation — Plaintiff alien provented from suing on account of outbreak of war — Cause of action, if susponded S 9 N 11 Alien enemy—Suit by — Suit as legal representative of deceased person—Limitation		•••	
Allen nemy—Suit prevented by outbreak of war between alien's mother country and Great Britain—Suspension of limitation —Plaintid alien provented from suing on account of outbreak of war —Cause of action, if suspended Allen enemy—Suit by — Suit as legal representative of deceased person—Lumitation Allen enemy—Suit by — Suit as legal representative of deceased person—Lumitation Allen and the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the suit of the s		•••	5 25 11 5
Alien enemy—Suit prevented by outbreak of war between alien's mother country and Great Britain—Suspension of limitation — Plaintiff alien provented from suing on account of outbreak of war —Cause of action, if susponded Alien enemy—Suit by — Suit as legal representative of deceased person—Lamitation Allenation —Ancestral property—Alienation by father—Suit for setting asido (a) By adopted son A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5			1 CO N 10
Malien enemy—Suit prevented by outbreak of war between alten's mother country and Great Britain—Suspension of limitation —Plaintiff alten provented from suing on account of outbreak of war—Cause of action, if suspended Allen enemy—Suit by — Suit as legal representative of deceased person—Limitation Allenation Allenation —Ancestral property—Allenation by father—Suit for setting asido (a) By adopted son A 126 N 5 A 126 N 5 A 126 N 3 A 126 N 3		***	A 62 N 12
mother country and Great Britain—Suspension of limitation —Plaintiff alsen provented from suing on account of outbreak of war —Cause of action, if susponded Allen ensmy—Suit by — Suit as legal representative of deceased person—Lumitation Alienation —Ancestral property—Alienation by father—Suit for setting asido (a) By adopted son		n'n	
— Plaintiff alien provented from suing on account of outbreak of war — Cause of action, if susponded S 9 N 11 Allen enemy—Suit by — Suit as legal representative of deceased person—Limitation S 6 N 3 Allenation — Ancestral property—Alienation by father—Suit for setting aside (a) By adopted son A 126 N 5 A 126 N 5 A 126 N 3 A 126 N 3 A 126 N 3			S 9 N 4
Cause of action, if susponded S 9 N 11 Allen enemy.—Suit by — Suit as legal representative of deceased person.—Limitation S 6 N 3 Alienation Ancestral property—Alienation by father—Suit for setting asido (a) By adopted son A 126 N 5 A 126 N 5			
S6 N 3 A 126 N 5		•••	S 9 N 11
S6 N 3 A 126 N 5	Alien enemy-Suit by - Suit as legal representative of deceased p	er-	
— Ancestral property—Alienation by father—Suit for setting asido (a) By adopted son			S 6 N 3
(a) By adopted son A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 5 A 126 N 3 A 126 N 3 A 126 N 3 A 126 N 2			
A 126 N 9 A 126 N 9 A 126 N 5 A 126 N 5 A 126 N 3		ido	
A 126 N 9 A 126 N 9 A 126 N 5 A 126 N 5 A 126 N 3	(a) By adopted son		A 126 N 5
A 126 N 5 A 126 N 3 A 126 N 2	A Section 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1 and 1	•••	
A 126 N 3			A 126 N 5
A 126 N 3		•	
A 126 N 2			
A 126 N 2			A 120 N 3
			A 126 N 2
	(g) By person governed by Customary Law in Punjab		

2700	G	ENERAL INDEX		
Aliena	tion—Ancestral property:	lienation by fat	ther: suit for sett	ing aside/Contd
	(h) By son			
	(1) Against alienco fro alienated—Suit, v			
	(n) Fact whether alien out notice of lin	nited powers o	f alienor, wheth	h.
	relevant for applic (iii) For redemption r	f usufruetuary	mortgage made l	hy
	father—Suit, who (iv) For setting aside			her
	father (v) Where another pers			A 125 N
	(vi) Where father purp	orted to alienate	aneestral proper	
	as guardian of mi (vn) Whether alienation applicability of A	must be one fe	or consideration f	
	(1) By son's son or other me	mber of family	for possession fro	
	(1) By transferee of son for 1 (k) Failure of son to sue w	ossession of prop	perty alienated	A 126 N 5
	guishes right to propert	r		A 120 N 5
	(1) Son in mother's womb wi			A 126 A 9
	y administrator—Alienation whether bound to set aside a	without permissi henation before	ion of Coort—He he can elaim reli	r, ef A 91 N 12
	which lie wants Sy Court of Wards	•••		A 91 N 13
	(a) Suit for setting aside—Li (b) Void alienation by Court:	mitation	ictor, whether ma	•:
	set aside such alienation (e) Whether binding an prop	before elaiming	appropriate relie	f: A 91 N 13 L: A 91 N 13
—P	y executor (a) Suit by legateo to declar		to not binding o	
	him—Limitation	that allenation	is not minding o	A 91 N 12
	(b) Whether binding on legal	ce		. A 91 N 13
	(a) After born coparcener co limitation against pre-ex	ming into exister	oce after expiry	s 6 N 16
	(b) After-born son—Suit tn time, if available to afte	set aside alienat	ion - Extension o	f S6N1
	(c) Right of after born son to	set aside - Min	ority of after born	S7N7
	son, if gives him extensi (d) Suit by copareener chal property—Extension of	lenging alienatio	n of joint family	S 6 N 16
	(e) Suit by son (i) Where alience does			A 120 N 35
	nated (ii) Where property bel	ongs to son		A 106 N 5
	(iii) Where property car	not be said to be a	ncestral property	S6 N 16
	(g) S		· mily-	S6 N 10
	Limitation	•••		

GENERAL INDEX	2701
Alienation—(Contd.)	
-By female guardian	
(a) Alienation by mother as guardian - Death of minor-Mother	
succeeding as hear - Snit by reversioner for impeaching	
alienation—Limitation	A 125 N 16
(h) Of minor's property - Suit for avaidance by reversioner-	
Limitation	A 125 N 5
-By female limited owner	
(a) Alienation for necessity - Alienation, whether binding on	
reversioner	A 141 N 15
 (h) Alienation not hinding no estate — Remedies of reversioner: (c) Alienation without necessity—Alienation, whether hinding on 	A 141 N 12
reversioner	A 141 N 15
(d) Impeachment of	
(i) Suit by remote reversioner—Maintainability	A 125 N 8
(11) Who can sue, within Art 125	A 125 N 9
(e) Invalidity of -Snit for declaration by reversioner during life.	
time of female—Limitation	A 141 N 12
(f) Possession of life estate by virtue of bequest, grant or transfer	
inter vivos - Suit in respect of - Suit by reversioner for	
declaration that alienation is not binding on reversioner	4 400 37 04
—Lamitation	A 120 N 31 A 125 N 2
(g) Remedies of reversioner in respect of (h) Right of reversioner to challenge — Recognition and purpose	A 120 N 2
	A 125 N 6
(i) Suit by reversioner	11 120 11 0
(i) Suit for declaration that alienation is not binding on	
reversioner-Limitation-Starting point	A 120 N 34
(ii) Limitation—Starting point	A 125 N 15
(iii) Whether each reversioner has a separate cause of	
action	A 120 N 34
(iv) Whether further alienation by alienee furnishes fresb	A 120 N 34
eause of action	A 120 M 09
Art, 44 and Art. 91	A 91 N 5
—By Hindu widow	11 02 21 0
(a) Alicnation by widow before adoption — Suit by adopted son	
-Nature of -Limitation A 125 N 3:	A 125 N 10
(b) Alienation without necessity—Suit for recovery of property	11 200 21 10
hy son subsequently adopted by widow-Limitation	A 141 N 7
(c) Of life interest—Whether furnishes cause of action to rever-	A 125 N 13
sioner	A 125 N 13
if ground for extension of time to sno	S 6 N 14
(e) Right of reversioner to sue for possession from alience—When	S 28 N 2
extinguished	5 25 N 2
(f) Suit by one reversioner that alienating cannot hind reversionary interest—Dismissal of suit an ground that he is not	
next reversioner but another — Suit by such other after	
widow's death for possessing against alience — Dismissal on	
ground that he is not reversioner—Snit by former reversioner	
for possession — Plaintiff, if gets fresh right of action on	
decree in other reversioner's suit	S 9 N 11

Alienation—By	Hindu wid	ow — (Conta	7.)		
				enation void e	rcent
for lif	o or until re	marriage of	widow		A 125 N 3
(h) Suit by	y reversione	r		•••	
(i) 1	For declarat	ion, brough	t after deat	h of limited fe	emale
	owner-Ap	plicability n	f Art. 125		A 125 N 3
(11)	Fo declare	that alien:	atinn is no	t binding on	the
	reversion-			. A 120	N 31; A 120 N 34
(111)	l'o declare a	lienation of	land void		
	(a) Adopti	on by Hind	u widow und	ler Benares S	chool
	01 111	ndu law wit	hout express	permission o	f ber
	hnsba	nd-Mortga	ge jointly w	ith adopted s	on of
	prope	rties inlierit	ed as limite	l owner - R	3ver-
	hone	, whether i	nust set us:	de adoption b	A 125 N 19
	(L) Alienat	ion Natu	ro of Co	mpotent tn at	
	Art. 1	25	10 01 - 00	mpotent ture	A 125 N 13
			tained mor	simple mort	
	by wi	dow - Who	ther furnish	tes fresh cans	se of
	action		***	A 125	N 13: A 125 N 10
	(d) Limita		•••	•••	A 195 N 3
	(i) :	For such s	sit under P	unjah Limita	tion
		(Custoin) A	lct		A 125 N 17
	(11)	limo, whoth	erextended	by virtue of S	. 18, A 125 N 18
	()	Limitation	Act		
	(111)			le is by virtue r being a Hin	
	(e) On deat			go absolutel	
	anoth	r femalo_1	Plaintiff ron	orsioner to wi	
	alionat	ing propert	r-Maintair	ability of sui	L A 120 No
				t, when appli	
	(a) Relief in	declaratory	suit deneni	lent upon anol	
	relicf	which is ti	nc.barred_	Whether can	ha .
	obtain	ed			A 120 N 12
	(h) Who m:	y bring suc	h suit within	a Art. 125	A 125 N 9
(1v) T	o set aside	 Extension 	n of time o	n ground of	lis Sen 17
	bility	•	***	• • •	Som 2"
(1) Whethe	r must be	set aside b	y raversion	r before he	ean A 91 N f
Ciaim i	oner which	he wants	•••	•••	A 91 N 4
(j) Whethe		•••	•••	•••	# 51 1.
-By Karnavan					
(a) Suit by	junior meml	er for decla	ration that	alienation is	A 120 N 36
(iv) Critical (iii)	on tarwad	-Limitation	-Starting	noint	
(b) Suit by	member of t	arwad for re	ecovery of pr	operty alienal	
		•••	•••		•••
(c) buil by	member ni i g on him—L	arwad to d		alienation is 1	A 91 N 8
-By lambardar	Suit be as	allenen net		 Lin de Jeolo	
tbat alienatio	n is not him	ding on bi-	arty to alien	nation to decis	
-By mahant of	math_Wh	ether bin	—- THIRTIPE CO.	ing mahanta	
-By member of	f Alivagane	nana famil	Trotter 1	inding on oth	
members		and rainity		MILETING OH OUR	er A 91 N 9
			***	***	

		2103
Alienation—(Contd)		
——By member of joint Hindu family (a) Remedy of another member of family not party t	o aliena-	
(b) Suit by another member of family not party to alier	ation to	A 91 N 6
declare that alienation is not hinding on him—Lan (c) Whether must be set aside by another member of fa		A 91 N 6
party to alienation before he can claim relief y	which he	1 01 17 0
-By minor as major	•••	A 91 N 6
(a) Suit for possession of property after attaining m	ajority—	
Limitation	•	A 91 N 15
(b) Whether void against minor	•••	A 91 N 15
By Muhammadan widow		
(a) Suit by remote reversioner to declare alienation of	land void	
except for life or until re-marriage of widow (h) Suit by reversioner to declare alienation of land voi	a	A 125 N 3
AND A STATE OF STREET	1.4 105.	A 125 N 13
		A 125 N 3
	2	5; A 125 N 2
(a) For such suit under Punjab Limitation		
Act		A 125 N 17
(b) Starting point	•••	A 125 N 18
(c) Where possession of female is by virtue	of a right	
	٠.,	A 125 N 5
		A 125 N 17
which is time barred, whether can be obtain	ed	A 125 N 19
(vi) Time, whether extended by virtue of S. 18, I		A 125 N 18
(vii) Who may bring such suit within Art. 125		
	***	A 125 N 9
-By one of daughters inheriting jointly father's estate with	right of	
-By one of daughters inheriting jointly father's estate with survivorship. Alienation affecting right of survivorship	right of	
survivorship-Alienation affecting right of survivorship	of other	A 125 N 9
survivorship.—Alienation affecting right of survivorship daughter.— Suit for declaration by other daughter.—Lin	of other itation :	
survivorship—Alienation affecting right of survivorship daughter — Suit for declaration by other daughter—Lin —By sonless proprietor in the Punjab — Whether bindin	of other itation : g on the	A 125 N 9 A 125 N 3
survivorship.—Altenation affecting right of survivorship daughter — Suit for declaration by other daughter.—Lin —By sonless proprietor in the Punjab — Whether bindin reversioner	of other nitation : g on the	A 125 N 9 A 125 N 8 A 91 N 11
survivorship—Altenation affecting right of survivorship daughter — Suit for declaration by other daughter—Lini —By sonless proprietor in the Punjab — Whether bindin reversioner —By trustee of temple—Whether hinding on succeeding tru	of other sitation: g on the	A 125 N 9 A 125 N 3
survivorship—Alienation affecting right of survivorship daughter — Sunt for declaration by other daughter—Lin —By sonless proprietor in the Punjab — Whether bindin reversioner —By trustee of temple—Whether hinding on succeeding tru —Invalidity of — Declaration of—Suit for—Limitation—	of other sitation: g on the	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10
survivorship—Altenation affecting right of survivorship daughter — Surt for declaration by other daughter—Lim —By sonless proprietor in the Punjab — Whether bindin reversioner	of other nitation: g on the estee Starting	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10 A 120 N 31
survivorship—Altenation affecting right of survivorship daughter — Surt for declaration by other daughter—Limit for declaration by other daughter—Limit reversioner	of other nitation : g on the estee Starting	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10
survivorship—Altenation affecting right of survivorship daughter — Suit for declaration by other daughter—Limit for declaration by other daughter—Limit reversioner	of other nitation: g on the stee Starting	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10 A 120 N 81 A 125 N 13
survivorship—Altenation affecting right of survivorship daughter — Surt for declaration by other daughter—Lini —By sonless proprietor in the Punjab — Whether bindin reversioner	of other nitation: g on the Starting nitation:	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10 A 120 N 81 A 125 N 13 A 91 N 14
survivorship—Altenation affecting right of survivorship daughter — Sunt for declaration by other daughter—Lin —By sonless proprietor in the Punjab — Whether bindin reversioner —By trustee of temple—Whether hinding on succeeding true. —Invalidity of — Declaration of—Suit for—Limitation—point —Meaning of —Suit for setting aside (a) Altenation voidable under S. 53, T. P. Act — Lin (b) Power of manager of Mitakshara point family to give d	of other nitation: g on the Starting nitation:	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10 A 120 N 81 A 125 N 13
survivorship—Altenation affecting right of survivorship daughter — Suit for declaration by other daughter—Lini —By sonless proprietor in the Punjab — Whether bindin reversioner —By trustee of temple—Whether hinding on succeeding tre —Invalidity of — Declaration of—Suit for—Limitation— point —Suit for setting sside (a) Altenation voidable under S. 53, T. P. Act — Lin (b) Power of manager of Mitakshara yoint family to give d —What is	of other idation: g on the stoe Starting idation: lischarge:	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10 A 120 N 81 A 125 N 13 A 91 N 14
survivorship—Altenation affecting right of survivorship daughter—Suit for declaration by other daughter—Lini —By sonless proprietor in the Punjab — Whether bindin reversioner —By trustee of temple—Whether hinding on succeeding true. —Invalidity of — Declaration of—Suit for—Limitation—point — Meaning of —Suit for setting aside (a) Altenation voidable under S. 53, T. P. Act — Lini (b) Power of manager of Mitakshara yoint family to give d—What is (a) Allotment of share on partition to a perfect stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mitakshara young the stranger of Mi	of other idation: g on the stoe Starting idation: lischarge:	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10 A 120 N 31 A 125 N 13 A 91 N 14 S 7 N 17
survivorship—Altenation affecting right of survivorship daughter — Suit for declaration by other daughter—Lini —By sonless proprietor in the Punjab — Whether bindin reversioner —By trustee of temple—Whether hinding on succeeding tre —Invalidity of — Declaration of—Suit for—Limitation— point —Suit for setting sside (a) Altenation voidable under S. 53, T. P. Act — Lin (b) Power of manager of Mitakshara joint family to give d —What is (a) Allotment of share on partition to a perfect strang ther allonation within Art. 126	of other nitation: g on the 	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10 A 120 N 81 A 125 N 13 A 91 N 14
survivorship—Alienation affecting right of survivorship daughter—Sunt for declaration by other daughter—Line By sonless proprietor in the Punjab — Whether bindin reversioner By trustee of temple—Whether hinding on succeeding true. Invalidity of — Declaration of—Suit for—Limitation—point Meaning of Suit for setting aside (a) Alienation voidable under S. 53, T. P. Act — Line (b) Power of manager of Mitakshara yoint family to give d—What is (a) Allotment of sharo on partition to a perfect strang ther allonation within Art. 126 (b) Compromise in nature of family arrangement enter	of other nitation: g on the stoe Starting nitation: lischarge: ger, whe ered into	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10 A 120 N 31 A 125 N 13 A 91 N 14 S 7 N 17 A 126 N 6
survivorship—Altenation affecting right of survivorship daughter — Suit for declaration by other daughter—Lini —By sonless proprietor in the Punjab — Whether bindin reversioner —By trustee of temple—Whether hinding on succeeding tre —Invalidity of — Declaration of—Suit for—Limitation— point — Meaning of —Suit for setting sside (a) Altenation voidable under S. 53, T. P. Act — Lin (b) Power of manager of Mitakshara yoint family to give d —What is (a) Allotment of share on partition to a perfect stran ther alienation within Art. 126 (b) Compromise in nature of family arrangement ente by widow or other lumited heir, whether alienation	of other nitation: g on the Starting nitation: lischarge: ger, whe-	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10 A 120 N 31 A 125 N 13 A 91 N 14 S 7 N 17
survivorship—Altenation affecting right of survivorship daughter — Surt for declaration by other daughter—Limit for declaration by other daughter—Limit for declaration by other daughter—Limit for eversioner	of other idation: g on the state Starting intation: ischarge: ger, whe cred into	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10 A 120 N 31 A 125 N 13 A 91 N 14 S 7 N 17 A 126 N 6
survivorship—Altenation affecting right of survivorship daughter—Suit for declaration by other daughter—Lini— By sonless proprietor in the Punjab — Whether bindin reversioner By trustee of temple—Whether hinding on succeeding tre—Linvalidity of — Declaration of—Suit for—Limitation—point Meaning of Suit for setting aside (a) Altenation voidable under S. 53, T. P. Act — Lin (b) Power of manager of Mitakshara point family to give of What is (a) Allotment of share on partition to a perfect strang ther allenation within Art. 126 (b) Compromise in nature of family arrangement by widow or other lumited heir, whether altenation (c) Compromise in the nature of family arrangement into by widow or other limited heir, whether altenation (c) Compromise in the nature of family arrangement into by widow or other limited heir. — Whether	of other idation: g on the state Starting intation: ischarge: ger, whe cred into	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10 A 120 N 31 A 125 N 13 A 91 N 14 S 7 N 17 A 126 N 6 A 125 N 13
survivorship—Altenation affecting right of survivorship daughter—Sunt for declaration by other daughter—Line By sonless proprietor in the Punjab — Whether bindin reversioner By trustee of temple—Whether hinding on succeeding true. Invalidity of — Declaration of—Suit for—Limitation—point Meaning of Suit for setting aside (a) Altenation voidable under S. 53, T. P. Act — Line (b) Power of manager of Mitakshara yoint family to give different allenation within Art. 126 (b) Compromise in nature of family arrangement enter by widow or other lumited heir, whether altenation (c) Compromise in the nature of family arrangement into by widow or other limited heir — Whether upon roversioners	of other iditation: g on the stop Starting sitcharge: ter, whe ered into entered ebinding	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10 A 120 N 31 A 125 N 13 A 91 N 14 S 7 N 17 A 126 N 6
survivorship—Altenation affecting right of survivorship daughter—Suit for declaration by other daughter—Limit for declaration by other daughter—Limit for declaration by other daughter—Limit for declaration of the Punjab—Whether binding on succeeding tre—Linvalidity of — Declaration of—Suit for—Limitation—point ————Meaning of ———————————————————————————————————	of other iditation: g on the stoe Starting uitation: lischarge: ter, whe ered into entered binding ale, whe	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10 A 120 N 91 A 125 N 13 A 91 N 14 S 7 N 17 A 126 N 6 A 125 N 13 A 125 N 13
survivorship—Altenation affecting right of survivorship daughter — Surt for declaration by other daughter—Line —By sonless proprietor in the Punjab — Whether bindin reversioner —By trustee of temple—Whether hinding on succeeding try —Invalidity of — Declaration of—Suit for—Limitation — point — Meaning of — Suit for setting aside (a) Altenation voidable under S. 53, T. P. Act — Line (b) Power of manager of Mitakshara yoint family to give d —What is (a) Allotunent of share on partition to a perfect strang ther alienation within Art. 125 (b) Compromise in nature of family arrangement enter the strangenies of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the silvent of the	istation: g on the g on the stoe Starting sitation: ischarge: ger, whe ered into	A 125 N 9 A 125 N 3 A 91 N 11 A 91 N 10 A 120 N 31 A 125 N 13 A 91 N 14 S 7 N 17 A 126 N 6 A 125 N 13 A 125 N 13 A 125 N 13
survivorship—Altenation affecting right of survivorship daughter—Suit for declaration by other daughter—Limit for declaration by other daughter—Limit for declaration by other daughter—Limit for declaration of the Punjab—Whether binding on succeeding tre—Linvalidity of — Declaration of—Suit for—Limitation—point ————Meaning of ———————————————————————————————————	of other iditation: g on the stoe Starting uitation: lischarge: ter, whe ered into entered binding ale, whe	A 125 N 9 A 125 N 8 A 91 N 11 A 91 N 10 A 120 N 91 A 125 N 13 A 91 N 14 S 7 N 17 A 126 N 6 A 125 N 13 A 125 N 13

Alienation-What is-(Contd.)

 (f) Devolution of property by succession, whether alienation (g) Gift by souless Hindu widow of her deceased bushand's estate 	A 125 N 13
	A 125 N 13
to her daughter, whether alienation	A 125 N 13
(h) Gift, whether alienation	A 125 N 13
(i) Hypothecation of immovable property, whether alienation:	A 125 N 13
(1) Mortgage of immovable property, whether elienation	A 125 N 13
(k) Perpetual lease, whether alienation	A 125 N 16
(1) Property bequeathed by will, whether elionation within	A 126 N 6
Art. 126	A 120 N 34
(m) Sale of equity of redemption, whether alienation	A 120 K 38
(n) Sale of property in execution of decree, whether alienation	or N 11
by widow within Art. 125 ·	A 125 N 14
(o) Sale, whother alienation within Art. 126	A 126 N 6 A 126 N 6
(p) Simple mertgage, whether alienation within Art. 126	A 120 N G
(q) Usufructuary mortgage, whether alienation within Art. 126:	A 126 N 6
(r) Whether must be one for consideration for applicability of	
Art. 126	A 126 N 6
(s) Withdrawal by widow of defence to an oction on mortgago	10
executed by her busband, whether alienation	A 125 N 13
Alience	
-Alience from female limited owner	
(c) Suit by roversioner for possession of property clienated by	
fomale without necessity—Limitation	A 141 N 15
(b) Suit for possession of property alienated by reversioner in	
whose favour limited owner has surrendered estate after	
olienation—Limitation	A 141 N 9
- Alience from heir or devisee-Suit against, by creditor of oncestor	
or tostator for declaration that alienation is void and for couse-	A 120 N 44
quential relief—Limitation	
Alioneo from Hindu female Suit for possession by Hindu rever-	A 141 N 12
sioner—Limitation	A LL.
-Alience of father-Alienation set aside at the instance of the sons	
except as to father's share - Profits received by such alience,	A 109 N 3
whether profits wrongfully received	N 103 2
Alienee of Hindu widow	
(a) Receipt of profits by - Part of alienation set aside after	
widow's death—Profits of whole property, whether wreng.	A 109 N 3
fully received	
(b) Receipt of profits by, after widow's death - Alienation set	A 109 N 24
aside—Whether profits wrongfully received	
Alience of member of joint family-Suit by another member-	A 127 N 3
Limitation applicable	,,
Alience of tenantSuit against	
(a) Suit by landlord fer possession on determination of tenancy	
by forfeiture by alienation—Snit under T. P. Act, S. 111—	A 143 N 5
Limitation	
(b) Suit by landlerd for possession on ground of breach of cendi- tion of non-alienation—Limitation A 143 N 2	: A 143 N 5
tion of non-alienation—Limitation A 143 N -	
(c) Suit for possession by landlord on ground of ferfeiture	A 139 N 3
incurred on ground of alienation—Limitation —Alience of trust property—Suit against—Suit for possession—	
Limitation	A 121 N 2

S 23 N 12

Amendment ——Amendment altering or adding to ground or hasis of right or liable. lity-No change in persons of parties-Whother amounts to addition of new parties within S. 22 S 22 N 6 -Amendment of decree - When amonots to sufficient cause to excuse delay in filing appeal S 5 N 14 ----Appeal, memo of-When allowed S'3 N 33 ----Application -- When allowed S-3 N 33 -Application to amend clerical errors - Whether subject to any period of limitation 53 N 26 Court, if can allow, introducing additional ground of exemption ... S 3 N 31 - Execution application in time - Amendment sought for after limitation, if to be allowed S 3 N 33 F N 10 -Limitation (a) Amendment attering substantial character of suit-Fresh ' suit barred at the time of amendment-Amondment, if to he allowed 83 N 33 (b) Suit filed in time - Amendment after limitation - Suit in amended form, if barred S 3 N 33 ----Of clerical error-Question of limitation, if arises 83N33FN6 -Plaint can be allowed to be amended by inclusion of allegation of acknowledgment of liability S 19 N 77 Ancestral property -Ancestral property of joint Mitakshara Hindu-family-Sale of-Setting aside-Suit for-Limitation A 49 N 9 -Moaning of A 126 N 7 -What is (a) Property gifted by father to son A 126 N 7 (b) Property, whother includes both moveable and immovable property ... A 126 N 7 Appeal -Addition of legal representative of deceased respondent after limitation-Delay, if can be excused on sufficient cause being shown: S 22 N 12 Addition of party made by Appellate Court in appeal from order of lower Court refusing to make addition-Addition, when to be deemed to be offected S 22 N ——Admission ex parte (a) Practice, legality of S 5 N 36 (b) Respondent, if must apply by motion as early as possible to set asido order • • S 5 N 36 (c) Respondent not objecting to, at hearing-High Court, if will S 5 N 36 - Admission ex parte beyond time-Absence of cotice to opposite party-Power of Court to ro-open question and decide as to sufficient cause S 5 N 36 -Amendment-Appeal by or against dead person-Whether can be amended by adding his legal representatives S 22 N 12 Appeal against sole respondent who is dead at the time of prefer-

ring appeal-Appeal, if valid

ŧ

2706 GENERAL INDEX	
Appeal-(Contd.)	
——Appeal dismissed for want of prosecution — Application	for A 168; A 168 N 2
re-admission (a) Application for re-admission of appeal struck off helore	
fixed for hearing, for default of payment of process fe	10
Limitation	A 168 N 3
(b) Application for re-admissinn under Rules of High Coun	rt—
Limitation	A 168 N 3
(c) Application invoking Court's inherent powers — Limitati	
(d) Application made in time—Party impleaded afterwards	A 168 N 7
Effect of (e) Application to restore appeal dismissed without inrisdict	tion
—Limitation	A 168 N 6
(f) Application to restore appeal rejected for non-paymen	t of
court-fee	A 168 N 5
(i) Limitation	A 168 N 5
(ii) Whether lies	
(g) Application to restore appeal rejected under Civil P. C., O	. 41
R. 10 (i) Limitation	A 168 N 4
And were as	A 168 N 4
(ii) Whether lies (h) Limitation	•••
(i) Art. 168 and Rule 9 (2) nf Appellate Side Rules	of
Procedure of Rangoon High Court	A 168 N 10
(ii) Art. 168, whether restricted to application under C	A 168 N 2
Pro. Code	A 100 N 9
(iii) Court, whether can extend time under inherent por	
(17) Plea of — Minority of applicant, whether answer	
(v) Starting print	A 168 N 8
(vi) Time, whether can be extended by virtue of S. 5, L	
Act	A 168 N 9
(i) Provision for	A 163 N 3
(1) What dismissed appeals can be re-admitted	
Appeal dismissed without jurisdiction-Re-admission ofAp	
cation for, whether one within Art. 168	11 2000
Appeal filed with copy of judgment or decree alone	
(8) 4	
	S 12 N 31
obtained —Appeal, if in time	•••
(b) Copy of decree produced in Court when time for appeal	bad c 12 N 31

31 S 12 N 31 (b) Copy of decree produced in Court expired...Appeal is barred -Appeal from decreo in suit under Divorce Act-Limitation appli-S 29 N 7 cable -Appeal from judgment on review-Time requisite for obtaining copy of the original judgment which was the subject matter of the review application-Whether can be deducted in computing S 12 N 27 limitation ----Appeal from orders--Limitatinn--Time spent in obtaining not only the fair order but also the final order to be excluded in com-S 12 N 35 puting period

•					
ve to appeal in criminal case	s				
Dimination	•••	A	179	N	9
(ii) Date of decree—What is		Ā	179	N	3
(in) Death of applicant—Substitution of legal represen	ta-				_
tive—Limitation		A	179	N	3
(iv) Limitation A 179; A 179	N1;	A	179	Ν	3
(v) Limitation—Starting point	•••	A	179	N	3
(vi) One application for leave to appeal from two deer	ees				
decided by one judgment—Amendment of such ap	pli.				
cation so as to restrict prayer to one decree, whet	her				
allowable	•••	A	179	N	2
(vii) Time occupied in obtaining copy of judgment, whet	her				
excluded		A	179	N	4
(vin) Time requisite for obtaining copy of decree appear	led				
from, whether excluded	•••		179		
(ix) Time, whether excluded by reason of legal disability	У	А	179	N	4
(x) Time, whether extended on ground that Court is ck on last day of limitation			179		
(x1) Time, whether extended under S. 5. Lim. Act	•••		179		
(xii) Two applications for leave to appeal from two deer	***	Λ	119	7.4	*
decided by one judgment—Limitation		Δ	179	N	a
(b) Procedure as to	•••		179		
	•••	А	719	14	2
(c) Two appeals from two decrees decided by one judgmen Procedure as to			179	.,	_
	•••				
Appeal under Code of Civil Procedure—Meaning of A 156	N 8;	A	166	N	3
Friminal appeal					
(a) Appeal by person in pail—Limitation—Time taken up					
forwarding applications for copies by nfficer in charge					
pail and in transmission of such copies to the pail to	be				_
excluded	***	S	12 N	1 3	3
(h) Application for leave to appeal—Limitation—Time taken			10.3		_
	•••		12 N 12 N		
	ase	٥.	12 1	13	3
filed with appeal-Whether can be excluded	***	S	12 N	13	q
Delay in filing	•••				_
(a) Appeal filed out of time owing to misleading entries					
copy made by copying department — Whether can	Dis OII				
admitted under S. 5	110	8	12 N		
(b) Excuse of	•••	٠.	121	s	
Dismissal of-Application for setting aside	•••				,
A CONTRACTOR OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY OF THE PROPERTY O					
A 172 ; A 172	N 1 ·	4	170	v .	,
			172		
(iii) Time, whether extended by virtue of S. 5, Lim. Ac-	t		172		
(h) By receiver of insolvent					-
(i) Limitation—Starting point A 172; A 172	N 1 ·	A :	179	N.	2
(ii) Provision for			172		
(iii) Time, whether extended by virtue of S. 5. Lim. Ac	ŧ.		172		
				'	-

Appeal _(Contd.) Ex parte—Application for rehearing (a) Application in appeal to set aside ex parte decree passed in

(a) Application in appeal to set aside ex parte decree passed in
suit—Limitation A 169 N 2
(b) Burden of proof as to application being in time A 169 N 3
(c) Court, whether has discretion to extend period of limitation: A 169 N 2
(d) Limitation—Starting point A 169; A 169 N 2; A 169 N 4
(e) Provision for A 169 N 2
(f) Respondent not served with notice of appeal-Limitation A 169 N 1
-Filing of, after expiry of period of limitation-Effect 83
Institution of Civil appeal
(a) By or against minor, when preferred S3 N6
(b) Memo, if must be accompanied by copy of decree and judg-
mont S3N6
(c) Memo must be signed by appellant or his pleader S 3 N 6
(c) memo mase no algued by appointing of mis facader
(ii) I symbol of sumetene court-100 on morno-110 cessity of
(e) Presentation by duty authorized person—Necessity of Co M 6
(f) Presentation to proper Court—Necossity of Band
(g) Second appeal—Copy of judgment of Court of first instance,
it to be cled
(L) Sanding of annual language if an organization S S N G F N D
(ii) bottom of appoint of poor, it outposes:
——Institution of—Criminal appeal, what constitutes Sandar N
Leave to appeal as pauper-Application for
4) La tale to the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of
(b) Application to continue in forms pauperis an appeal for which
approach has put in insumicient court-iso—Dimitation 170 N g
(d) Limitation—Starting point A 170; A 170 N 2; A 170 N 3
(c) Provision for such A 170 K
A 170 N 4
170 N 5
A100
-
(a) Computation of
(1) Day of judgment and time requisite for obtaining copy
be excluded g 19
and of decree shanid be excluded
(b) Exclusion of time spent in proceeding bona fide in Court S 14 N 5
without jurisdiction—Exclusion, if available
Maintainability of Order dismissing appeal as too late Appeal, S 5 N 45
if hes A 156 N 2
Meaning of A 100 K
(a) Appeals from Appellate Side of High Court—Whether governed by S. 12
(b) 'Appeal' in S. 12, whether includes appeal from Original Side S 12 N 4

to set aside A 182 N 37
apicon a 182 N 55
(d) In Art. 182, Cl. 2

GENERAL INDEX	2709
Appeal — (Contd.)	
New plea as to limitation	
(a) If can be raised	. S3N17
(b) If can be raised when plea depends nn question of fact	0.037.45
(c) Involving investigation into fresh facts, if can be raised	C C M
(d) Involving only question of law, if can be raised	. S3N17
(e) Raising question of fact abandoned by party, if can be sub	-
sequently raised as matter of right	
-Notice of What is, within Art. 169	
Period of pendency of appeal from decree-Whether can b	
excluded in computing limitation for execution of decree	
Power of Appellate Court to add as respondent person who wa	C 00 M 4
party to suit but not made party to appeal Preferring of appeal does not amount to injunction or stay	CAENTAE
Presentation—Copy of decree and judgment not accompanying	
mama Annaal of makel	0.4 1/14
Presentation after hour fixed by Judge-Validity	0.4 37.14
Proceedings of community Processes of	C 9 N 9C
Down and annel determined	1 179 M O
T) 1770 3	1 400 10 0
-Revision application-Whether appeal	
	. S5N30
Second appeal - Limitation - Computation of - Time spent in	
obtaining copies of judgment and decree of first Court—Whether	
can be excluded	S12N8
Section 22, if applies to appeals	. S 22 N 4
-Time barred appeal, if can be treated as cross-objections in anothe	r
appeal	. 83N18
Two appeals against same decree with one decree copy - Second	
copy, furnishing of, after time—Delay, if can be excused	. S5N31
—	, S3; S3N6
—Wbether suit	S 2 Ct 10 N 1
Appearance	
-Appearance and defence in summary suit under Civil Procedur	n
Code - Application for leave : Sec under Civil Procedure Code	
-Meaning of	. A 163 N 6
Appellant	
- Legal representative of : See Legal representative - Of deceases	3
appellant	•
Appellate Court	
——Duty of	S3N18
- Appellate	
	. S3N18
Duty to dis	
miss suit	S3N18
	. A 182 N 44
Power of, to go into question of limitation	
(a) Appeal by some only of several defendants — Court, if can	
see if suit against all was instituted beyond time	. S3N18

2708	GENERAL INDEX
Annan	1—(Contd.)
	x parte—Application for rebearing
— 13	(a) Application in appeal to set aside ex parte decree passed in
	suit—Limitation A 169 N 2
	(b) Burden of proof as to application being in time A 169 N3
	(c) Court, whether has discreting to extend period of limitation: A 169 N2
	(d) Limitation Starting point A 160: A 160 N 9: A 169 N 4
	(e) Provision for A 169 N 2
	(f) Respondent not served with notice of appeal—Limitation A 189 N I
F	ling of, after expiry of period of limitation—Effect S3
Tr	stitution of—Civil appeal
	(a) By or against minor, when preferred S3N6
	(b) Memo, if must be accompanied by enny of decree and judg-
	ment S3No
	(c) Memo must be signed by appellant or his pleader S 3 N 6
	(d) Payment of sufficient court-fee on memo—Necessity of S3N6
	(e) Presentation by duty authorized person—Necessity of
	(i) Fresentation to proper Court—Necessity of
	(g) Second appeal—Copy of judgment of Court of first instance,
	It to be fired
	(b) Conding of different by frost, it cannot be at a figure of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the fir
L	eave to appeal as panper—Application for
	(a) Application for leave to file cross-objections in forms pau-
	peris—minitation
	/\0.**
	(d) Limitation—Starting point A 170: A 170 N 2, A 170 N
	(e) Provision for such Allows
	A 170 N 6
	A 170 N 4
	A 170 N 5
т.	(1) Time, whether extended on ground of minority
	(a) Computation of
	(i) Day of judgment and time requisite for obtaining copy
	of decree, sentence nr order and copy of judgment to
	be excluded
	(ii) Time requisite for obtaining both copy of judgment S 12 N 8
	and of decree should be excluded
	(b) Exclusion of time spent in proceeding bona fide in Court S 14 N 5
36	without jurisdiction—Exclusion, if available
——N	aintainability of—Order dismissing appeal as too late—Appeal, [hes
Nf	paning of A 150 h
	(a) Appeals from Appellate Side of High Court—Whether gov.
	erned by S 12
	(b) 'Appeal' in S. 12, whether includes appeal from Original Side S12 N 4
	of High Court
	(c) Application by party tn Appellate Court asking to set aside
	A 182 N
	(d) in Art. 182, Cl. 2

	
Appeal—(Contd.)	
New plea as to limitation	
(a) If can be raised	S 3 N 17
(b) If can be raised when plea depends on question of fact	S 3 N 17
(0) 1 00 1 1 1 1 1	S 3 N 17
	8 3 N 17
sub-	50111
sequently raised as matter of right	S 3 N 17
-Notice of What is, within Art 169	A 169 N 4
-Period of pendency of appeal from decree-Whether can be	
1 3 3	S 15 N 15
	5 10 11 10
party to suit but not made party to appeal	S 22 N 4
	S 15 N 15
Presentation—Copy of decree and indigment not accompanying	0 10 11 10
1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	S 4 N 14
The same of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the st	S 4 N 14
——Rejection of, summarily—Propriety of	S 3 N 36
—Review and appeal distinguished	A 173 N 3
	A 177 N 2
Revision converted into appeal-Delay in presenting appeal, if can	
be excused	8 5 N 30
-Second appeal - Limitation - Computation of - Time spent in	
obtaining copies of judgment and decree of first Court-Whether	
can be excluded	S 12 N 8
—Section 22, if applies to appeals	S 22 N 4
-Time-barred appeal, if can be treated as cross-objections in another	
appeal	S 3 N 18
-Two appeals against same decroe with one decree copy - Second	5 0 1, 10
copy, furnishing of, after time-Delay, if can be excused	S 5 N 31
	3;83N6
	2 Cl 10 N 1
	2 CI 10 N 1
Appearance	
Appearance and defence in summary suit under Civil Procedure	
Code - Application for leave: See under Civil Procedure Code	
—Meaning of	A 163 N 6
Appellant	
-Legal representative of : See Legal representative - Of deceased	
appellant	
• •	
Appellate Court	
—Duty of	
(a) Appeal filed beyond limitation	S 3 N 18
(b) Point of limitation not taken in memo of appeal — Appellate	
Court, if bound to go into the question	S 3 N 18
(c) Suit in lower Court instituted beyond time-Duty to dis-	
miss suit	S3N18
	A 182 N 44
Power of, to go into question of limitation	
(a) Appeal by some only of several defendants — Court, if can	
see if suit against all was instituted beyond time	S3N18

2710	GENER	MAL INDEX		
Appellate Conrt-P				Contd.)
	y from portion of d		, if can consider	S 3 N 13
Power of, under	whole suit is barred O. 41 R. 33, Civi s who have nut the	l P. C., may		
objection agains	t decree	•••		A 182 N 35
Power of under order notwithsta	O. 41, R. 33, Civil auding that appeal			A 182 N 35
Applicant				a a @ 1 N 1
Meaning of		•••	S 2 Cl 1;	S 2 C1 1 N 1
Application				
Act, if applies m Civil Procedure	Code			S 3 N 26
Act, if applies Code	to ell applications	under the	Civil Procedure	S3N26
Admission ex pa	rto beyond time—A	Absence of u	otice to opposite	
	f Court to reopen qu	uestion and d	ecide as to suffi.	S 5 N 36
	ct to-Test to dete	in-	•••	S 3 N 26
-By liquidator of			v due from con-	
tributory, if ma	intainable when at	the date of ep	plication suit for	S 3 N 26
money would be	barred	,	delitor to	80 11 20
insolvent'e estat	nee for recovery o te—Whether equiv	money due alent to euit		26; S 3 N 30
limitation ——Filing and cond	 1176.41		business' within	
Art. 84	uct of — Whether	r particular		A 84 N 3
-For execution-1				5N3FN1 5N3FN1
-For final decree-				PMPTH
For leave to ap	peal—Day nf judg of decree, sentence of	ment and tir	ne requisite for	S 12
For leave to appe	al—Delay in filing-	Excuse of	PYCIAGE	S 5
-For leave to ap	peal as pauper -	Delay in fi	ling, if can be	S 5 N 3
excused		•••		50
For leave to appe (a) Time requise be exclude	sal tn Privy Council site for obtaining co	py nf decree—	Whethershould	S 12 N 29
(b) Time requ	isite for abtaining	copy of judge	ment_Whether	S 12 N 23
can be exc	luded in computing	limitation for	application	
For leave to app filing, if can be	excused	e), Criminai i	r. 0.—Delay 12	S 5 N 3
-For leave to def		Delay in		5N3FN1
excused			. c	ENSEN!
——Governed by Art. ——Limitation for—1			A 181	; A 181 N 2
(a) Article 181,	whether applies nn	ly to application	ons under Civil	A 181 N 2
Procedure	Code at nf time—Time f			
residuary	Art. 181, whether e	xtended		A 181 N 21 A 181 N 2
(c) Starting poi	int of limitation—Pr	rinciples	181	A 181 N 2
(a) rest to see	if application is gov	erned by Art.	101	

PREDAT. TREE	

Application—Limitation for; residuary provisions—(Contd.)	
(e) Where it is the duty of Court to do particular thing suo	
motu, whether governed by Art. 181	A 181 N 2
	S 3
Matter resting with discretion of Court Undue delay in approach-	
ing Court, if will be considered by Court	S 3 N 26
Presentation of Practice allowing petitions to be thrown into box	
—Such presentation, if proper	S, 4 N 14
Proceeding not falling under Civil Procedure Code - Maintainabi.	
lity of, if affected by fact that snit to obtain same relief would	~
bave been barred at the date of institution of proceeding	S 3 N 26
Revision application	
(a) Whether appeal	A 177 N 2
(b) Whether subject to abatement	A 177 N 2
(c) Whether suit	A 177 N 2
-Right of assignee pendente lite to apply in pending suit, when	
accrues	A 181 N 20
To bring legal representative on record-Delay in filing, if can be	
excused S	5N3FN1
To rescind leave to sue-Limitation	A 181 N 14
To set aside abatement-Delay in filing, if can be excused S	5N3FN1
	5 N 3 F N 1
	5N3FN1
	5 N 3 F N 1
—To which provisions as to excuse of delay made applicable by or	• • • • • • •
under any enactment—Delay in filing, if can be excused	8.5
under any enactment—Delay in filing, if can be excused Under Act other than Civil P. C. but where Court is saked to	8 5
- Under Act other than Civil P. C. but where Court is asked to	85
	A 181 N 22
Under Act other than Civil P. C. but where Court is asked to exercise its jurisdiction by applying Civil Procedure Code	
	A 181 N 22
	A 181 N 22 A 181 N 22
	A 181 N 22 A 181 N 22
Under Act other than Civil P. C. but where Court is asked to exercise its jurisdiction by applying Civil Procedure Code — Limitation	A 181 N 22 A 181 N 22 A 181 N 6 5 N 3 F N 1
Under Act other than Civil P. C. but where Court is asked to exercise its jurisdiction by applying Civil Procedure Code Limitation Under Companies Act Limitation Under O. 34, R. 8. 4, Civil P. C Limitation Under O. 9, R. 4, Civil P. C Made after time Delay, if can be excused S Under O. 9, R. 4, Civil P. C., in Bombay Delay in making, if can be excused	A 181 N 22 A 181 N 22 A 181 N 6
Under Act other than Civil P. C. but where Court is asked to exercise its jurisdiction by applying Civil Procedure Code — Limitation Under Companies Act—Limitation Under O. 34, R. 8-A, Civil P. C.—Limitation Under O. 9, R. 4, Civil P. C.—Made after time — Delay, if can be excused	A 181 N 22 A 181 N 22 A 181 N 6 5 N 3 F N 1 S 5 N 3
	A 181 N 22 A 181 N 22 A 181 N 6 5 N 3 F N 1
— Under Act other than Civil P. C. but where Court is asked to exercise its jurisdiction by applying Civil Procedure Code — Limitation	A 181 N 22 A 181 N 22 A 181 N 6 5 N 3 F N 1 S 5 N 3
Under O. 9, R. 9, Civil P. O. — Made after time—Delay, if can be excused Under O. 9, R. 9, Civil P. O. — Made after time—Delay, if can be excused Under O. 9, R. 9, Civil P. O. — Made after time—Delay, if can be oversed Under O. 9, R. 4, Civil P. O. — Made after time—Delay, if can be excused Under O. 9, R. 4, Civil P. O. — Made after time—Delay in making, if can be excused Under O. 9, R. 9, Civil P. O. — Made after time—Delay in making, if can be excused Under O. 9, R. 9, Civil P. O. — Made after time—Delay in making, if can be excused	A 181 N 22 A 181 N 22 A 181 N 6 5 N 3 F N 1 S 5 N 3
	A 181 N 22 A 181 N 22 A 181 N 6 5 N 3 F N 1 S 5 N 3 F N 1 S 5 N 3
Under Act other than Civil P. C. but where Court is asked to exercise its jurisdiction by applying Civil Procedure Code — Limitation	A 181 N 22 A 181 N 22 A 181 N 6 5 N 3 F N 1 S 5 N 3
	A 181 N 22 A 181 N 22 A 181 N 6 5 N 3 F N 1 S 5 N 3 F N 1 S 5 N 3 S 5 N 3
Under Act other than Civil P. C. but where Court is asked to exercise its jurisdiction by applying Civil Procedure Code — Limitation	A 181 N 22 A 181 N 22 A 181 N 6 5 N 3 F N 1 S 5 N 3 5 N 3 F N 1 S 5 N 3 S 5 N 3
Under O. 9. R. 9. Civil P. C., in Bombay — Delay in making, if can be excused Under O. 9, R. 9. Civil P. C., in Bombay — Delay in making, if can be excused Under O. 9, R. 9. Civil P. C. — Delay in filing, if can be excused Under O. 9, R. 9. Civil P. C. — Delay in making, if can be excused Under O. 9, R. 9. Civil P. C. — Made after time — Delay, if can be excused Under O. 9, R. 9. Civil P. C. — Made after time — Delay, if can be excused Under O. 9, R. 9. Civil P. C. — Delay in making, if can be excused Under O. 9, R. 9. Civil P. C. — Delay in making, if can be excused Under O. 9, R. 9. Civil P. C. — Delay in making, if can be excused Under O. 9, R. 13, Civil P. C. — Delay in filing, if can be excused Under O. 21, R. 95, Civil P. C. — Delay in filing, if can be excused Under O. 29, R. 9. Civil P. C. — Delay in filing, if can be excused	A 181 N 22 A 181 N 22 A 181 N 6 5 N 3 F N 1 S 5 N 3 F N 1 S 5 N 3 S 5 N 3
Under Act other than Civil P. C. but where Court is asked to exercise its jurisdiction by applying Civil Procedure Code — Limitation	A 181 N 22 A 181 N 22 A 181 N 6 5 N 3 F N 1 E 5 N 3 5 N 3 F N 1 S 5 N 3 5 N 3 F N 1 S 5 N 3
Under Act other than Civil P. C. but where Court is asked to exercise its jurisdiction by applying Civil Procedure Code — Limitation	A 181 N 22 A 181 N 22 A 181 N 6 5 N 3 F N 1 S 5 N 3 5 N 3 F N 1 S 5 N 3 S 5 N 3
Under Act other than Civil P. C. but where Court is asked to exercise its jurisdiction by applying Civil Procedure Code— Limitation	A 181 N 22 A 181 N 22 A 181 N 6 5 N 3 F N 1 E 5 N 3 5 N 3 F N 1 S 5 N 3 5 N 3 F N 1 S 5 N 3

f	
Application—(Contd.)	
Under Provincial Insolvency Act-Limitation	A 181 N 23
Under R. 27, Ch. 38-Original Side Rules, Calcutta High Court	- 1 101 1 0
Limitation	A 181 N 2
What is	
(a) Application to Registrar of Original Side for issue of notice	of
motion under Rr. 154, 155 of Original Side Rules	of
Madras High Court, whether application within Art. 163	: A 163 N 3
(b) Certificate of Advocate General under Letters Patent Cl. S	26.
whether application	A 162 N 2
When made	S3N7
Appropriation .	
-Payment by debtor-Mcthod of appropriation determined at t	be
outset by express contract - Specific appropriation on the occ	2.
	S 20 N 6
Arbitration .	
-Act, if applies to such proceedings	S3N27
	of.
 Agreement to refer to arbitration matter in respect of cause action that has accrued—Cessation of cause of action, if arises 	60
as to affect running of limitation	5 9 N 13
Award. See also under Award.	•••
	to
(a) Agreement to deal with matter in dispute seriatim and deliver award bit by bit — Portion so decided, whether di	
	A 178 N 3
(b) Award on reference through Court—Failure of arbitrator	10
	. A 178 N 4
(d) Filing of	
(i) Application for—Limitation	A 178
	i 17 1 R
(iii) Application under Sch. 2, Para. 10, Civil P. C., res	d A 178 N 1
with para 19—Limitation	
(1v) Application under Sch. 2, Para. 20, Civil P. C	A 178 N 2
Limitation	
(v) Award filed without intervention of Court - Whether	A 178 N 3
con to spine up and not med as whole	" 178 N 4
(vi) Date of award—What is (vii) Failure of arbitrator to file award—Remedies of part	•
in whose favour award is made	
(vui) Failure to file within limitation—Whether invalidate	S 17 9
award	
(ix) Limitation—Starting point	A 178 N 4 A 178 N 2
(x) Mode of	
(x1) Order filing award and order passing decree in terms o	f
it contained in same order—Portion of order direct	A 178 N 3
ing filing of award — Whether appealable	178 N 2
(xii) Provision for	* A 178 N 3
(xiii) Suit for—Limitation	•
(xiv) Time spent bons fide in infructious proceedings in wrong Court, whether excluded	A 178 N 5
(xv) Time, whether extended by virtue of S. 5, Lim. Act	A 178 N 5
(xvi) Time, whether extended by virtue of S. 6, Lim. Act	. 3 178 17

General Index	2713
Arbitration-Award-Filing of-(Contd.)	
	A 178 N 2
(vviii) Where reference and arbitration are both without	
intervention of Court—Provision for (xix) Where without suit parties agree to refer differences	A 178 N 2
arbitrator—Provision for	A 178 N 2
(e) Invalidity of—Failure to make award rule of Court with	A 178 N 3
(f) Whether must be single instrument	A 178 N 3
heir respe	
reement liability	of -
,	S 19 N 46
—Duty of arbitrators not to allow time-barred claims	S3N27
Proceedings before arbitrator	
(a) Time spent in prosecuting in good faith the same class before arbitrator without jurisdiction—Whether can be	00
, , ,	S 14 N 5
	S 14 N 13
to arb	
	S 14 N 18
—Provisions as to	A 178 N 2
Sust referred to, by Court's order-Court, if can dismiss suit a barred	S 3 N 27
Arrears	
Of revenue-Demands recoverable as arrears of revenue-What	
	N 2 , A 16 N 2a,
Suit for arrears of customary dues payable to chhatram Limite	A 120 N 39
Artisan	
-Meaning of	A7N5
Assessment	
	oe .
liable for rent-Suit for-Limitatiou-Starting point	A 120 N 3
Assessment of lakhiraj grants	
Assessment of rent-free land-Suit for: See under Rent	
Assessment on inam lands-Assessment payable to mamdars-	
Whether rent Suit for declaration of right to impose without consequential relie	A 110 N 2
-Limitation	1 100 31 0
Assignee	1 00 17 0
—Of administration bond—Suit ou—Limitation	A 68 N 2
dismissal of appeal	
A 172; A 172	N 1; A 172 N 3
(111) Time, whether extended by virtue of S 5, Lim. Act .	A 172 N 2 A 172 N 3
(m) Ime; mem I mem by the bot by the life to	11 13

Assignee - Of Insolvent - (Contd.)

Assignes—Uf Insolvent—(Contd.)	
(b) Application by, for setting aside dismissal of anit	
(i) Limitation—Starting point A 172; A 172 N	1 · A 179 N 3
(11) Provision for	A 172 N 2
(iii) Time, whether extended by virtue of S. 5. Limitation	
Act	A 172 N 3
Of last manager of endowed property-Dispossession of-Suit for	
—Suit, whether one for possession	A 120 N 4
Right of, to apply pendente lite When accrues	A 181 N 20
Assignment	
Of mortgage Mortgagee receiving mortgage money in fraud of	
assignee—Suit by assignee for money received by mortgagee—	
Limitation	A 62 N 31
Vaid and and 37-22	21 02 21 0
Void assignmentVoid assignment of mortgage bond	
received by assignee on such bond—Suit by assignor—Suit for	A 62 N 31
recovery of money-Limitation	A 02 K 02
Attachment ·	
-Before judgment	
(a) By order of Provincial Small Cause Court—Order in claim	
proceeding preferred in respect of such attachment—Setting	A 11 N 19
aside—Suit for—Limitation	
(b) Claims and objections—Order as to—Setting aside—Suit for	A 11 N 19
-Limitation	C 22
Claims and objections	
(a) Claim by person in adverse possession of property attached	
but whose title has not ripened allowed. Suit by decree-	
bolder for setting aside order within limitation but after	
ripening of title of adverse possessor - Suit, if main-	A 11 N 2a
tainable	21 22 2.
(b) Order disallowing claim	
(i) Order under Civil P. C.—Withdrawal or removal of	A 11 N 6
attachment subsequent to order—Effect of	A 22
(11) Order under Presidency Small Cause Courts Act, S. 28	
-Withdrawal or removal of attachment subsequent	A 11 N 6
to order—Effect of	
(c) Withdrawal of attachment prior to enquiry into claim or	A 11 N 7
objection—Effect of	
Claims and objections - Order as to-Properties in respect of	A 11 N 10
which such order can be conclusive	
(a) Debt attached under Civil P. C., O. 21, R. 46, whether can	A 11 N 10
be comprised in order	
(b) Property comprised in order, whether must be moveable or	A 11 N 10
Immovable In execution of mortgage degree if necessary	A 11 N 18
- The transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the transport of the	
- Money wrongly attached Money paid over to decree bolder-	A 62 N 27
	21 3
Of immovable property	
(a) Attachment by revenue authorities for arrears of Govern-	A 15
ment revenue -Setting aside -Suit for Limitation	
(b) Attachment for arrears of land revenue under Bombay Land	
Demonstrate Control of the control of limit	
Revenue Code—Forfeiture of lands before expiry of limi-	
Revenue Code—Forfeiture of lands before expiry of limitation for suit for restoration—Subsequent suit to declare forfeiture illegal—Limitation	A 15 N I

Rita	chmant	(Conta	1

Attachment—(Conta.)	
—Of moveable property—Attachment in execution of decree—Move-	
able property put in custody of Sapurdar-Objection to attach-	
ment-Court upholding objection-Suit by objector for recovery	
of moveable property attached—Limitation	A 143 N 3
Of property by Magistrate-Not cansed by wrongful denial of	
plaintiff's title hy defendant—Right to declaration of title—	
Ŷĸ'n	CI OO 37 47
When accrues	5 23 N 11
——Order as to claims and objections	
(a) Suit by person against whom order passed	
(i) Failure to hring such suit within limitation	
(a) Effect of	
(a) Attaching decree-holder, whether can move	
after limitation Insolvency Court to annul	
transfer where judgment-debtor has been	
	4 44 37 0
declared insolvent	A 11 N 3
(11) On right of claimant in respect of stranger	
not party to claim proceeding	A 11 N 3
(b) Stranger not party to claim proceeding, whether	
can set up such failure as bar to action against	
him	A 11 N 3
(ii) Limitation A	11: A 11 N 2
(a) Article 11 and Art. 29 distinguished	A 11 N 10
(b) Starting point	A 11 N 21
(c) Time spent in ansuccessful revision to High	
	A 11 N 21
(d) Time, whether extended by virtue of S. 14, Limi-	A 11 M 21
tation Act	A 11 N 21
(e) Where order is against minor	A 11 N 5
(iii) Nature of such suit	A 11 N 8
(iv) Order referred to in Art. 11	
(a) What is	A 11 N 11
(s) Consent order in claim petitions, whether	
order referred to in Art. 11	A 11 N 15
(is) Order allowing withdrawal of claim or objec-	
tion, whether order referred to in Art. 11;	A 11 N 14
(111) Order dismissing claim for default of appear-	
anco, whether order passed against claimant	
within Art. 11	A 11 N 12
(iv) Order dismissing claim for failure to pro-	
duce evidence, whether order passed against	
claimant within Art. 11	A 11 N 12
(v) Order dismissing claim without jurisdiction,	
whether order referred to in Art. 11	A 11 N 17
(vi) Order in claim proceedings directing sales	
after notifying claim, whether order refer-	
red to in Art. 11	A 11 N 16
(vii) Order rejecting claim for want of jurisdic-	A II N IO
	A 11 N 17
tion, whether order referred to in Art. 11	A II N II
(b) Whether must have been passed on investigation	
into merits of the case for applicability of	4 11 17 10
	A 11 N 12
(v) Relief which can be prayed for in such suit—Nature of:	A 11 N 9

Attachment—Order as to nlaims and objections—Suit by person a order passed—(Contd.)	gainst whom
(vi) Suit barred under other Article-Suit, whether main-	
tainable under Art. 11	A 11 N 3
(vii) Suit based on cause of action which accrues subse-	
quent to date of order-Limitation	A 11 N 2 A
(viii) Suit for establishing right to property comprised in	
order dismissing claim or objection on ground of	A 11 N 13
delay—Limitation	
mortgage decree—Limitation	A 11 N 18
(x) Who can bring such suit within Art. 11	A 11 N 4
Order under S. 146, Criminal P. COrder, whether one respect-	
ing possession of immoveable property within Art. 47	A 47 N 5
- Property attached under Criminal Procedure Code-Suit for	
declaration of right—Limitation—Starting point	A 120 N 11
-Property of plaintiff under attachment under S. 146, Criminal	
P. C.—Title cannot be extinguished bowever long attachment	S 28 N 3
may continue ——Under S. 146, Criminal P. C , of land after dispossession—Suit for	5 50 1
possession by person dispossessed—Attachment, if enlarges period	_
of limitation for suit	S 9 N 3
What constitutes	A 11 N 18
Whether amounts to injunction or stay order within S. 15	S 15 N 12
removing of standing crops inspite of fact that claim of objector	
to such crops was allowed in his favour-Suit for compensation	A 29 N 5
by objector—Limitation	
Suit for declaration of title—Limitation, when begins to run :	S 23 N 17
Attorney	
Application by, for costs	A 84 N 4
(a) Under Civil Procedure Code—Limitation	A 81 N 4
(b) Under Rules of High Court -Limitation	
-Costs, lien for, against client, if can be availed of when suit to	S 3 N 11
recover costs barred Suit against—By client for recovery of documents and papers	-
relating to his case—Attorney, whether can plead in defence	
lien for costs even if his claim for costs is barred by limita-	A 84 N 6
tion	
Suit by, for costs	A 84 N 2
(a) Against opposite party—Limitation	
(b) Against other party according to provision of consent decree —Limitation	A 120 N 18
—Limitation A 81; A 81 N	2; A 84 N
(d) Where there is express agreement as to time when costs are	A 84 N 2
to be pud—Limitation	A 01 1.
Anotion-purchaser	
See also Execution purchaser	
Amount of decree realized by anction-purchaser Execution sale	
set aside—Suit by decree-holder against auction-purchaser for	A 62 N 31
money realized by latter under decree—Limitation ——Application by—Under Civil P. C., O. 21, R. 93 for refund of	A 181 N 11
purchase money—Limitation—Starting point	A 181 W 17
- 141103	

Auction-purchaser—(Contd.)	
Auction-nurchaser being delivered symbolical possession - Subse-	
quent suit for actual possession-Limitation-Starting point-	
Where judgment-debtor was in possession at date of sale	A 138 N 8
Auction-purchaser having obtained possession of property sold in	
execution-Loss of property by anction purchaser-Subsequent	
suit for recovery of possession—Limitation	A 138 N 7
	A 134 N 9
for valuable consideration	A 134 N 9
	V 19# M 9
possession—Limitation	A 137 N 2
- Auction purchaser obstructed in delivery of possession of immov-	
able property sold in execution—Remedy of	A 167 N 2
being delivered effective symbolical possession — Subsequent suit	
for actual possession—Limitation—Starting point	A 137 N 7
Auction purchaser of interest of remainderman—Suit by, for pos.	1 107 17 0
session of property sold—Limitation—Starting point ——Auction purchaser of property in possession of mortgagee—Suit by,	A 137 N 6
for possession of property—Limitation—Starting point	A 137 N 6
	11 10 11 0
ment sold in execution of decree against manager of endowment	
-Suit against, for recovery of possession of property - Limi.	
tation-Starting point A 13	ABCNS
—Suit by	
(a) For possession—Jndgment-debtor out of possession at date of sale—Limitation	A 137 N 2
(b) For possession of immovable property sold—Judgment-debtor	A 107 N 2
	; A 138 N 2
(c) For possession of property sold in execution-Under what	,
circumstances suit maintaioable	A 138 N 2
(d) For refund of purchase money, after sale of patni taluq for	
arrears of rent is set aside—Limitation	A 62 N 20
(e) For refund of purchase money on execution sale being set aside under O. 21, R. 92, Civil P. C.—Maintainability.—	
Limitation	A 97 N 12
(f) For refund of purchase money on ground that judgment-	4 51 11 12
debtor had no saleable interest in property sold-Main-	
tainability of suit—Limitation A 62 N 19;	A 120 N 45
Award	
See also Arbitration—Award	
-Application for filing award under Sch. 2, Para. 20, Civil P. C	
S. 22, if applies Application to have award as to family rights and property filed	S 22 N 3
and decreed upon—Mutation proceedings before Revenue autho-	
rities-Whether on same cause of action for purposes of S. 14 :	S 14 N 18
Application to set asido	
(a) Application on the face of it out of time-Duty of party to	
bring to notice of Court that copies have been obtained	0.10.31.00
and time was consumed thereby (b) Time requisite for obtaining copy of award to be excluded: S 1:	S 12 N 30
(c) Time requisite for obtaining copy of award only to be	-+ ra Tra 14 90
excluded	S 12 N 8
•	

(a) Award filed in Chartered High Court - Enforcement of-

Award-(Contd.)

----Award filed under Arbitration Act S. 15

Application for—Limitation	A 183 N 2
(1) Future at 35-3- of	A 183 N 2
	A 158 N 2
	11 100 11 5
	A 158 N 2
ther can be set aside on application	11 100 1
	A 159 N 2
(a) Whether Court can take notice of invalidity of such award	A 158 N 2
(b) Whether need he set aside	A 100 I
Award of Board of Revenue	
(a) Suit to contest	A 1; A 1 N 1
(i) Limitation	AIIA
(ii) Time spent in obtaining copy of the award, whether	AINI
can be excluded	A 2 21 2
(ui) Whether application within Sec. 12, sub-s. 4, Lim.	A1N1
Act	AINI
(h) Who can contest	
Charge on immovable property created by-Enforcement of-Suit	A 132 N 6
for—Limitation	
Correction of Application for Application under Civil P. C.	A 153 N 2
para. 12, Sch. 2—Limitation	24
Decision by Settlement Officer under Bengal Land Revenue Regu-	A 45 N 1
lations, 1822, 1825, 1833, when has the force of award	7 101.
Enforcement of Suit for Whether snit for compensation for	A 115 N 11
hreach of contract	Y 110 1/ 11
——Filing of	
(a) Application for, under Civil P. C., para. 20, Sch. 2	A 153 N 2
(i) Limitation	A 100 1.
(ii) Written statement filed by defendant in answer to	A 159 N 2
such statement-Limitation	A 158 N 4
(b) Wbat is	
Modification ofApplication for Application under Civil P. C.,	A 159 N 9
para, 12, Scb. 2—Limitation	W 100 m
-Party to-Covenant for indemnity in favour of - Covenant, when	A 83 N 15
enures for benefit of all persons claiming under bim	A 120 N 43
Possession based on Snit for Limitatinn	
-Remission of - Application under Civil P. C., pars. 14, Sch 2-	A 158 N 2
Limitation	A 100 M
ion to vali-	
filed within	A 158 N 5
time_Whether allowable	
(b) Application to revise a decree passed on basis of award-	A 159 N 2
Limitation	
/.\ \ .\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	A 158 5 N 3 F N 1
Shienting to award	
bjecting to award Original Side of	5 N 3 F N 1
Shienting to award	

GENERAL INDEX	2719
Award—Setting aside—Application for—(Contd.) (f) Limitation	
(i) Bar of—Effect of (ii) Object of the Legislature in framing Art. 158 (iii) Starting point (iii) Starting point (iii) Whether Court has power to extend time allowed under Art. 158, Limitation Act for supplying necessary court-fee	
(h) Whether S. 5 applies to application to set aside award (i) Whether time extended under S. 4 (j) Whether time requisite for obtaining copy of award excluded	A 158 N 5 A 158 N 5 A 158 N 5
Suit hased upon Where agreement to refer to arbitration has heen registered and award signed by parties — Limitation applicable, whether same as applicable to suit for compensation for breach of registered contract Suit on—Suit on award signed by parties making reference—Suit,	
whether one for compensation for breach of contract ——Suit to enforce — Whether out for specific performance of con-	A 115 N 11
tract —Surt to set aside award — Surt on promissory note executed in pursuance of award — Whether on same cause of action for pur-	
poses of S. 14 — Terms of — Specific performance of — Spit for	S 14 N 18 A 120 N 42
Under Arbitration Act—Filing of—Application for—Limitation Under Bongal Land Revenue Settlement Regulations 1922, 1925, and 1833 (a) Contesting of—Snit for—Limitation—Starting point	A 120 N 42 A 164 N 2
(b) P	N 2, A 45 N 3
Art. 46	A 46 N 2 46, A 46 N 2 A 46 N 2
(d) Suit to avoid batwara division by Collector—Limitation (e) Suit to recover possession of property subject to payment of revenue settled by rovone authorities—Limitation	A 45 N 1 A 45 N 1 A 45 N 1
(f) Suit to set aside order of Commissioner refusing to make set- tlement of khas mahal land with plaintiff who claimed settlement of it as accretion to his jote—Limitation	A 45 N 1
	A 115 N 11 A 115 N 11 A 116 N 14
Whether contract	
Ballments —Kinds of	A 145 N 3
	_

Award-(Contd.)	
-Award filed under Arhitration Act S. 15	
(a) Award filed in Chartered High Court - Enforcement of-	
Application for—Limitation	A 183 N 2
(b) Enforcement of—Made of	A 183 N 2
Award made on reference through Court-On what ground can be	A 158 N 2
set aside	A 100 H =
Award made on reference without intervention of Court Whe-	A 159 N 2
ther can be set aside on application	11 100 11 -
(a) Whether Court can take notice of invalidity of such award	A 158 N 2
(b) Whether need be set aside	A 158 N 2
() () ()	
(i) Limitation	A 1; A 1 N 1
(11) Time spent in obtaining copy of the award, whether	
can be excluded	AINI
(iii) Whether application within Sec. 12, sub-s. 4, Lim,	AINI
Act	AIN
(b) Who can contest	AIN
Charge on immovable property created hy-Enforcement of-Suit	A 132 N 6
for—Limitation	77 202
Correction of Application for Application under Civil P. C.	A 158 N
para. 13, Sch. 2—Limitation	-
— Decision by Settlement Officer under Bengal Land Revenue Regu-	A 45 N I
lations, 1822, 1825, 1833, when has the force of award	
- Enforcement of - Sunt for - Whether suit for compensation for	A 115 N 11
breach of contract	
(a) Application for, under Civil P. C., para. 20, Sch. 2	
(i) Limitation	A 158 N
(ii) Written statement filed by defendant in answer to	A 159 N
such statement—Limitation	A 158 N 4
(b) What is	V 100 m
-Modification of Application for - Application under Civil P. C.,	A 158 N 2
para. 12, Sch. 2—Limitation	A 100
- Party to Covenant for indemnity in favour of - Covenant, when	A 83 N 15
enurcs for henefit of all persons claiming under him	A 120 N 42
Possession based on-Snit for-Limitation	
Remission of Application under Civil P. C., para. 14, Sch 2-	A 159 N 2
- Setting aside Application for	
(a) Application containing additional ground of objection to validity of award in addition to prior application filed within	4 * 0 N 5
time—Whether allowable	A 158 N 5
(b) Application to reviso a decree passed nn basis of award—	A 155 N 2
Lamitation	
(c) Application under Civil P. C.—Limitation "S.	5 N 3 F N 1
(d) Delay in filing, if can be excused	-
(e) Filing of affidavit in Prothunntary's office objecting to award	
made on reference made in a suit nn the Original Side of High Court — Filing of such award, whether equivalent to	A 158 N 2
application for setting aside award	A 100 s.

	2110
Award—Setting aside—Application for—(Contd.)	
(f) Limitation	
(1) Bar of—Effect of	A 158 N 7
(ii) Object of the Legislature in framing Art 158	A 158 N 3
(m) Starting point	A 158 N 4
(g) Whether Court has power to extend time allowed under	V 100 H #
Art 158, Limitation Act for supplying necessary court-fee	
	1 1 70 37 11
stamp	A 158 N 5
(h) Whether S 5 applies to application to set aside award	A 158 N 5
(i) Whether time extended under S 4	A 158 N 5
(j) Whether time requisite for obtaining copy of award exclu-	
ded	A 158 N 6
-Snit hased upon - Where agreement to refer to arbitration has	
heen registered and award signed by parties - Limitation applic.	
able, whether same as applicable to snit for compensation for	
breach of registered contract	A 116 N 14
-Suit on-Suit on award signed by parties making reference-Suit,	
whether one for compensation for breach of contract	A 115 N 11
	11 140 11 11
Suit to enforce — Whether suit for specific performance of con-	
tract	A 113 N 5
-Suit to set aside award - Smt on promissory note executed in	
pursuance of award - Whether on came cause of action for pur-	
poses of S. 14	S 14 N 18
—Terms of Specific performance of Suit for	
Art. 120	A 120 N 42
· parties in token of	
ber same as appli-	
of contract	A 120 N 42
Under Arbitration Act-Filing of-Application for-Limitation	A 164 N 2
Under Bengal Land Revenue Settlement Regulations 1822, 1825,	
and 1833	
(a) Contesting of—Suit for—Limitation—Starting point	
(a) Consessing of Date to: Emiliarion Dearing point	1 2: A 45 N 3
(b) Property comprised in—Suit for recovery	1 2, A 40 11 3
(i) Nature of relicf in suit governed by Art. 46	A 46 N 2
(ii) Suit by party bound by such award—Limitation A	40 A 40 M 2
(11) Suit, by whom maintainable for applicability of Art. 46:	A 46 N 2
(c) Suit to amend settlement and establish right of persons who	A 40 N 2
	1 45 55 5
were not before the Collector—Limitation	A 45 N 1
(d) Suit to avoid batwara division by Collector—Limitation	A 45 N 1
(e) Suit to recover possession of property subject to payment of	
revenue settled by revenue authorities-Limitation	A 45 N 1
(f) Suit to set aside order of Commissioner refusing to make set.	
tlement of khas mahal land with plaintiff who claimed	
settlement of it as accretion to his jote—Limitation	A 45 N 1
—What is	A 45 N 2
(a) Whether contract	A 115 N 11
(b) Whether contract, if signed by parties making reference	A 115 N 11
(c) Whether contract within Art. 116	A 116 N 14
Whether contract	A 113 N 5
Whether must be single instrument	A 178 N 3
Bailments	
—Kinds of	
	A 115 N O
······································	A 145 N 3

Banker

——Deposit with—Suit for				
(a) Against person who has placed 1	bimself in p	position of h	anker	4 00 17 0
with regard to particular person	m—Limita	tion	•••	A 60 N 6
(b) Limitation		•••	•••	A 60 N 3
(c) Limitation, where deposit is pa	yable on de	mand	•••	A 60
	-			
Banker and Customer			:	
-Banker, if trustee for customer in reg	sard to cust	omers mon	sys m	10 N 11, 18
his hands	•••	•••	0	10 14 11, 10
Bankruptcy Act				
-Applicability to Crown				A 149 N 3
• •	••• •			
Benamidar			41-	
- Decree against Decree obtained co	llusively ar	d frauduler	itiy	
Real owner, whether bound to sue to	set aside	decres with	n the	
period applicable to suits for setting	ig aside dec	rees on grou	nd or	A 95 N 8
fraud	•••	***	•••	S 10 N 15
If a trustee for a specific purpose	•••	•••	•••	D 10 14 10
Impleaded as defendant in time-Ber	amidar act	ing as real o	woer	
and benami relationship known on	ly subseque	ntly_Imple	ading	6
of real owner after limitation-Whe	ther fatal to	snit		5 22 N 6
-Meaning of, if a trustee	ther tarm to		8	2 Cl 11 N 2
Promissory note in name of benamida	- Suit on	nota he hen		
owner making benamidar a defend	lant Bangs	mider if ca	n be	
owner making benamidar a delend	ant—Denai	muai, ii ta		S 22 N 29
allowed to be transposed as plaintiff	•••	•••	•••	
Suit against			and	
(a) Suit by real owner for money	peronging to) TEST DWILL	25.20	A 62 N 24
received by benamidar—Limit	ation	1	****	
(b) Suit by real owner for money	received by	Denamidar	upon	A 62 N 24
mortgage bond in his name—I	imitation		Jaio-	-
(c) Suit on agreement by benamida	r to collect	money for I	HEIO	A 115 N 1
tiff—Whether based on contra	ct within A	rt. 110	24	
-Suit by-Addition of real owner as po	rty after lit	nitation—Di	116, 11	
becomes infructions				S 22 N 5
	•••	•••	•••	S 22 N 6 S 10 N 7
	•••		•••	S 22 N 5 S 10 N 7
		•••	•••	S 22 N 5 S 10 N 7
Bengal Act 11 of 1859	•••	•••	•••	S 10 N 7
Bengal Act 11 of 1859 ——Statutory liability of Government to	return to ov	mer of land	•••	S 10 N 9
Bengal Act 11 of 1859 ——Statutory liability of Government to surplus proceeds—Whether liability	return to ov	mer of land	•••	S 10 N 7
Bengal Act 11 of 1859 ——Statutory liability of Government to surplus proceeds—Whether liability Bengal Cess Act	return to ov	mer of land	, blos	S 10 N 9
Bengal Act 11 of 1859 ——Statutory hability of Government to surplus proceeds—Whether liability Bengal Cess Act ——Cess payable under—Cess payable by	return to ov	rner of land ustee	, blos	S 10 N 9
Bengal Act 11 of 1859 ——Statutory liability of Government to surplus proceeds—Whether liability Bengal Cess Act	return to ov	mer of land	, blos	S 10 N 7
Bengal Act 11 of 1859 — Statutory liability of Government to isurplus proceeds—Whether liability Bengal Cess Act — Cess payable under—Cess payable by their rent Bengal Payables & Act Bengal Payables & Act	return to ov is that of tr tenant to p	rner of land ustee roprietor—V	sold,	S 10 N 9
Bengal Act 11 of 1859 — Statutory liability of Government to insurplus proceeds—Whether liability Bengal Cess Act — Cess payable under—Cess payable by their rent Bengal Payables & Act Bengal Payables & Act	return to ov is that of tr tenant to p	rner of land ustee roprietor—V	sold,	\$ 10 N 7 S 10 N 9 A 110 N 2
Bengal Act 11 of 1859 — Statutory liability of Government to I surplus proceeds—Whether liability Bengal Cess Act — Cess payable under—Cess payable by the rent Bengal Drainage Act — Cost levied on landlord under—Su	return to over is that of the tenant to proceed the second tenant to proceed the second tenant to proceed the second tenant to proceed the second tenant tenant to proceed the second tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant te	rner of land ustee roprietor—V	sold,	S 10 N 9
Bengal Act 11 of 1859 — Statutory liability of Government to I surplus proceeds—Whether liability Bengal Cess Act — Cess payable under—Cess payable by ther rent Bengal Drainage Act — Cost levied on landlord under—Surtenants for such costs—Whether ren	return to over is that of the tenant to proceed the second tenant to proceed the second tenant to proceed the second tenant to proceed the second tenant tenant to proceed the second tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant tenant te	rner of land ustee roprietor—V	sold, Whe-	\$ 10 N 7 S 10 N 9 A 110 N 2
Bengal Act 11 of 1859 — Statutory liability of Government to isurplus proceeds—Whether liability Bengal Cess Act — Cess payable under—Cess payable by their rent Bengal Drainage Act — Cost levied on landlord under—Sustemants for such costs—Whether ren Bengal Estates Partition Act	return to over is that of the tenant to property of the payable to the tenant to property of the payable to the tenant to property of the payable to the tenant to property of the payable to the tenant to property of the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to	roprietor—V	Bold,	\$ 10 N ⁹ A 110 N ² A 110 N ²
Bengal Act 11 of 1859 — Statutory liability of Government to I surplus proceeds—Whether liability Bengal Cess Act — Cess payable under—Cess payable by their rent Bengal Drainage Act — Cost levied on landlord under—Surtenants for such costs—Whether ren Bengal Estates Partition Act — S 82—Order under, whether affect	return to over is that of the tenant to property of the tenant to property of the tenant to property of the tenant to property of the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to over the tenant to ov	roprietor—V to landlore partition u	Bold, Whe-	\$ 10 N ⁹ A 110 N ² A 110 N ²
Bengal Act 11 of 1859 — Statutory liability of Government to isurplus proceeds—Whether liability Bengal Cess Act — Cess payable under—Cess payable by their rent Bengal Drainage Act — Cost levied on landlord under—Sustemants for such costs—Whether ren Bengal Estates Partition Act	return to over is that of the tenant to property of the payable to the tenant to property of the payable to the tenant to property of the payable to the tenant to property of the payable to the tenant to property of the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to the payable to	roprietor—V	Bold,	\$ 10 N 7 S 10 N 9 A 110 N 2
Bengal Act 11 of 1859 — Statutory liability of Government to 1 surplus proceeds—Whether liability Bengal Cess Act — Cess payable under—Cess payable by the rent Bengal Drainage Act — Cost levied on landlord under—Surtenants for such costs—Whether rent Bengal Estates Partition Act — S 82—Order under, whether affection and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the su	return to over is that of tree tenant to pure tenant to pure ms payable turns to right to	roprietor—\ to landlore raprition u	Bold, Whe-	\$ 10 N ⁹ A 110 N ² A 110 N ²
Bengal Act 11 of 1859 — Statutory liability of Government to 1 surplus proceeds—Whether liability Bengal Cess Act — Cess payable under—Cess payable by the rent Bengal Drainage Act — Cost levied on landlord under—Surtenants for such costs—Whether rent Bengal Estates Partition Act — S 82—Order under, whether affection and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the su	return to over is that of tree tenant to pure tenant to pure ms payable turns to right to	roprietor—\ to landlore raprition u	Bold, Whe-	\$ 10 N ⁹ A 110 N ² A 110 N ²
Bengal Act 11 of 1859 — Statutory liability of Government to 1 surplus proceeds—Whether liability Bengal Cess Act — Cess payable under—Cess payable by ther rent Bengal Drainage Act — Cost levied on liadlord under—Sur tenants for such costs—Whether ren Bengal Estates Partition Act — S 82—Order under, whether affect general law Bengal Regulation 17 of 1805 — Proceedings under—Effect of—See Me	return to over is that of tree tenant to pure tenant to pure ms payable turns to right to	roprietor—\ to landlore raprition u	Bold, Whe-	S 10 N 7 S 10 N 9 A 110 N 2 A 110 N 2 A 14 N 2
Bengal Act 11 of 1859 — Statutory liability of Government to 1 surplus proceeds—Whether liability Bengal Cess Act — Cess payable under—Cess payable by the rent Bengal Drainage Act — Cost levied on landlord under—Surtenants for such costs—Whether rent Bengal Estates Partition Act — S 82—Order under, whether affection and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the surplus and the su	return to over is that of tree tenant to pure tenant to pure ms payable turns to right to	roprietor—\ to landlore raprition u	Bold, Whe-	\$ 10 N ⁹ A 110 N ² A 110 N ²

Bengal Tenancy Act					
-S. 26.F-Application under-Delay in	filing—E	Excuse of	S &	N4FN8	
-S. 111-A-Suit under-Limitation-S				A 120 N 50	
-S. 155-Suit under-Suit for ejectme				.1 120 11 00	
land—Limitation	one on gre	Jimu Or IIIIs	450 01	A 143 N 2	
-S 158-Proceedings under-Whether	suits	•••		2 Cl 10 N 1	
-S 158 (B)-Execution sale in contras		_Declaratio			
such sale is illegal-Suit for-Limita				A 120 N 31	
-S. 167-Legal disability, extension on	ground of	- Whether			
able for proceedings under			S 6	N 20 F N 2	
S. 173-Sale under-Setting aside-A	pplication	for—Limit	ation:	A 166 N 10	
-S. 174-Applications under - Applica	ability of S	3. 18 of Lim	itation		
Act		• •		S 29 N 3	
-S 184 - Suits under - Provisions of	d Lamitati	ion Act othe	r than		
Ss. 7, 8 and 9 apply	•••	•••	•••	S 29 N 5	
Suit for rent under				A 110 N 5	
(a) Limitation (b) Suit based on registered lease de	ad Timi	in tion	***	A 116 N 8	
-	ca-Limi	Lation		A IIU N C	
Bhagdari Act (Bombay Act 5 of 1862)					
S. 3-Suit under-Suit by Collector-	-Limitatio	n		A 149 N 3	
Bill					
Accommodation bill See Accommoda	tion bill				
Foreign bill			•		
(a) Dishonoured foreign bill - Suit	on - Li	mitation_S	tarting		
point	***	***	Ă 7	7, A 77 N 2	
(b) Meaning of				A 77 N 1	
Bili of exchange					
Acceptor for honour-Suit by, against	person fo	r whose hon	our bill		
has been accepted—Limitation	***	411	•••	A 79 N 1	
-Bill of exchange sent in settlement of	accounts -	- Bill disho	noured		
on presentment of its acceptance—S	uit for rec	overy on su	ms due		
on accounts—Limitation	•••	•••		A 78 N 3	
Definition of	***	•••	•••	S 2 Cl 2	
- Dishonoured by non-acceptance	_				
	-	•••	•••	A 77 N 2 A 78 N 2	
but for payment—Limitation		.4.3 (•••	AIDNZ	
	4	ited for acce	eptance		
	4.	ited for acce		A 78 N 1	
Hundi (a) Hundi never presented for acce	otaneo_S	 nit on—Lim	itation:		
—Hundi (a) Hundi never presented for acce (b) Hundi not falling within bill of	ptance—S evchange	uit on—Lim	itation:	A 78 N 1	
 Hundi (a) Hundi never presented for acce (b) Hundi not falling within bill of as defined in Negotiable Instr 	ptance—S exchange uments Ac	uit on—Lim	itation:	A 78 N 1 A 80 N 1	
——Hundi (a) Hundi never presented for acce (b) Hundi not falling within bill of as defined in Negotiable Instr contract and local usage gover	ptance—S exchange uments Ac	uit on—Lim	itation: ry note	A 78 N 1 A 80 N 1 S 2 Cl 2 N 1	
—Hundi (a) Hundi never presented for acce (b) Hundi not falling within bill of as defined in Negotiable Instr- contract and local usage gover (c) Meaning of	ptance—Sections of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of the section of th	uit on—Lim	itation: ry note	A 78 N 1 Å 80 N 1 S 2 Cl 2 N 1 S 2 Cl 2 N 1	
— Hundi (a) Hundi never presented for acce (b) Hundi not falling within bill of as defined in Negotiable Instr contract and local usage gover (c) Meaning of — Maturity of — Method of calculating	ptance—S exchange uments Ac n it	uit on—Lim or promisso t — General 	itation: ry note	A 78 N 1 A 80 N 1 S 2 Cl 2 N 1 S 2 Cl 2 N 1 A 69 N 2	
— Hundi (a) Hundi never presented for acce (b) Hundi not falling within bill of as defined in Negotiable Instr- contract and local usage over (c) Meaning of — Maturity of—Method of calculating — Meaning of — Meaning of	ptance—Si evchange uments Ac n it	uit on—Lim or promisso t — General	itation: ry note	A 78 N 1 A 80 N 1 S 2 Cl 2 N 1 S 2 Cl 2 N 1 A 69 N 2 1; A 69 N 1	
— Hundi (a) Hundi never presented for acce (b) Hundi not falling within hall of as defined in Negotiable fur- contract and local usage gover (c) Meaning of — Maturity of—Method of calculating — Meaning of — Not payablo on demand—When falls	ptance—Si evchange uments Ac n it	uit on—Lim or promisso t — General S:	itation: ry note law of	A 78 N 1 A 80 N 1 S 2 Cl 2 N 1 S 2 Cl 2 N 1 A 69 N 2	
— Hundi (a) Hundi never presented for acce (b) Hundi not falling within hall of as defined in Negotiable Instr contract and local usage gover (c) Meaning of — Maturity of—Mothod of calculating — Meaning of — Not payablo on demand—When falls — Payablo, a stated number of days or	ptance—Si evchange uments Ac n it	uit on—Lim or promisso t — General Si iter date or	itation: ry note law of 2 Cl 2 N sight—	A 78 N 1 A 80 N 1 S 2 Cl 2 N 1 S 2 Cl 2 N 1 A 69 N 2 1; A 69 N 1 A 69 N 2	
— Hundi (a) Hundi never presented for acce (b) Hundi not falling within hll of as defined in Negotiable Instr contract and local usage gover (c) Meaning of — Maturity of—Method of calculating — Meaning of — Not payablo on demand—When falls — Payablo, a stated number of days or Modo of calculating maturity	ptance—Si evchange uments Ac n it	uit on—Lim or promisso t — General S :	itation: ry note law of 2 Cl 2 N sight—	A 78 N 1 A 80 N 1 S 2 CI 2 N 1 S 2 CI 2 N 1 A 69 N 2 1; A 69 N 1 A 69 N 2 A 72 N 1	
— Hundi (a) Hundi never presented for acce (b) Hundi not falling within hall of as defined in Negotiable Instr contract and local usage gover (c) Meaning of — Maturity of—Mothod of calculating — Meaning of — Not payablo on demand—When falls — Payablo, a stated number of days or	ptance—Si evchange uments Ac n it	uit on—Lim or promisso t — General Si iter date or	itation: ry note law of 2 Cl 2 N sight—	A 78 N 1 A 80 N 1 S 2 Cl 2 N 1 S 2 Cl 2 N 1 A 69 N 2 1; A 69 N 1 A 69 N 2	

Bill of exchange -(Contd.)						
Payable after sight						
(a) Meaning of			A 70 1	N 2. /	1 75	NI
(h) Methods of presentation	•••	***		,	70	N S
(c) Suit on—Limitation	•••	•••		•		A 70
Payable at fixed time	•••	•••	•••			
(a) Evidence of contract fixing	noriod of no	umant s	whother			
admissible in cases where bil	lia ailant an ti	ymon.			69	N 3
(b) Suit on—Limitation	is snow on th	16 Doing	•••	-		A 69
(c) Where bill fixes a date, nvider			of			
		at terms	01 604-		60	N 3
tract are different, whether				-	1 00	
-Payable at fixed time after date -						
ment—Whether must be embodied	in the bill its	self to co			co	N 3
bill of exchange payable at fixed ti	me	***	~. ***	- 41	03	***
-Payable at fixed time after demand	-Suit on-Li	mitation-	-Start.	FO 1	по	N 1
ing point		. •••	A	72, A	172	A 72
Payable at fixed time after sight-S			***	.		
Payable at particular place-Suit on	-Limitation	•••	A	71; A	. 71	I. r
——Payable at sight						
(a) Limitation-Art. 70 and Art.	73 distinguishe	ed	•••	Λ	. 70	N 1
(b) Meaning of				A	. 70	N I
(e) Suit on-Limitation	•••			A	70	
Payable at two places-Whether can		at either	place :	A	71	ŅΙ
Payable on demand	•					
7			w .wet.			
				A	73	N 4
	•••		- 1			
			g			
	٠.		g		į.	, 73
	٠.					
ed. whether excluded	٠,			A	73	N 5
ed, whether excluded	•.				73 73	N 5 N 1
ed, whether excluded	•.	•••			73 73	N 5
od, whether excluded	will not be r	 nade for	•••	A A	73 73 73	N 5 N 1 N 8
ed, whether excluded	will not be r	nade for	•••	A A	73 73 73	N 5 N 1 N 8 N 4
•	•••	•••	certain	A A A	73 73 73 73	N 5 N 1 N 8 N 4 N 4
(g) Oral agreement to postpone da	te of payment-	_Limitat	certain	A A A	73 73 73	N 5 N 1 N 8 N 4 N 4
(g) Oral agreement to postpone da (h) Suit on—Limitation—Art. 73	te of payment-	_Limitat	certain	A A A	73 73 73 73	N 5 N 1 N 8 N 4 N 4
(g) Oral agreement to postpone da (h) Suit on—Limitation—Art. 73 (i) What is	te of payment- and Art. 70 di	_Limitat stinguishe	certain	A A A A	73 73 73 73 73 73	N 5 N 1 N 8 N 4 N 3
(g) Oral agreement to postpone da (h) Sunt on—Limitation—Art. 73 (i) What is (j) Bill of axchange in whice	to of payment- and Art. 70 di	_Limitat stinguishe	certain	A A A A	73 73 73 73	N 5 N 1 N 8 N 4 N 3
(g) Oral agreement to postpone da (h) Sut on_Limitation_Art. 73 (i) What is (i) Bill of nxchange in which of exchange payable on	te of payment- and Art. 70 di nn time is fixed demand	Limitat stinguishe	certain ion ed	A A A A A	73 73 73 73 73 73	N 5 N 1 N 8 N 4 N 3
(g) Oral agreement to postpone da (h) Sutt on—Limitation—Art. 73 (i) What is (i) Bill of axchange in which of exchange payable on (ii) Bill of exchange payable	te of payment- and Art. 70 dis non time is fixed demand de at sight, v	Limitat stinguishe	certain ion ed	A A A A A	78 73 73 73 73 73 73	N 5 N 1 N 8 N 4 N 3
(g) Oral agreement to postpone da (h) Sunt on—Limitation—Art. 73 (i) What is (i) Bill of exchange in which of exchange payable on (ii) Bill of exchange payal exchange payable on do	te of payment- and Art. 70 dis non time is fixed demand de at sight, v	Limitat stinguishe	certain ion ed	A A A A A	73 73 73 73 73 73	N 5 N 1 N 8 N 4 N 3
(g) Oral agreement to postpone da (h) Sutt on—Limitation—Art. 73 (i) What is (i) Bill of axchange in which of exchange payable on (ii) Bill of exchange payable	te of payment- and Art. 70 dis non time is fixed demand de at sight, v	Limitat stinguishe	certain ion id er bill bill of	A A A A A	78 73 73 73 73 73 73	N 5 N 1 N 8 N 4 N 3
(g) Oral agreement to postpone da (h) Sunt on—Limitation—Art. 73 (i) What is (i) Bill of exchange in which of exchange payable on (ii) Bill of exchange payal exchange payable on de —Sunt based nn—Limitation	to of payment- and Art. 70 di n nn time is fixed demand de at sight, v mand	Limitat stinguished, wheth whether	certain ion id der bill bill of	A A A A A A A	73 73 73 73 73 73 73 73	N 5 N 1 N 8 N 4 N 3 N 3
(g) Oral agreement to postpone da (h) Sut on_Limitation_Art. 73 (i) What is (i) Bill of exchange in whice of exchange payable on (ii) Bill of exchange payable on de exchange payable nn de —Sut based nn_Limitation —Suit on (a) Bill of exchange nownt presents	to of payment- and Art. 70 di n nn time is fixed demand de at sight, v mand	Limitat stinguished, wheth whether	certain ion id der bill bill of	A A A A A A	73 73 73 73 73 73 73 73	N 5 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
(g) Oral agreement to postpone da (h) Sunt on—Limitation—Art. 73 (i) What is (i) Bill of exchange in which of exchange payable on (ii) Bill of exchange payal exchange payable on de —Sunt based nn—Limitation	to of payment- and Art. 70 dis i nn time is fixed demand de at sight, v mand 	Limitate tinguished, whether the tinguished whether the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished	certain ion dd bill of dly for	A A A A A A	73 73 73 73 73 73 73 73 73	N 5 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
(g) Oral agreement to postpone da (h) Sunt on—Limitation—Art. 73 (i) What is (i) Bill of axchange in whice of exchange payable on (ii) Bill if exchange payable on exchange payable in de exchange payable in de —Sunt based nn—Limitation Sunt on (a) Bill nt exchange never present payment—Limitation	to of payment- and Art. 70 dis in the ise fixed demand demand de at sight, y mand and for acceptant Art. 50	Limitat stinguished, wheth whether	certain ion dd bill of dly for	A A A A A A	73 73 73 73 73 73 73 73 73 73 73	N 5 N 1 1 N 1 1 N 1 1 1 1 1 1 1 1 1 1 1
(g) Oral agreement to postpone da (h) Suut on—Limitation—Art. 73 (i) What is (i) Bill of exchange in whice of exchange payable on (ii) Bill if exchange payable on de exchange payable on de —Suut based nn—Limitation —Suit on (a) Bill of exchange nevnt present payment—Limitation (b) Illustrative cases governed by	to of payment- and Art. 70 dis in the ise fixed demand demand de at sight, y mand and for acceptant Art. 50	Limitate tinguished, whether the tinguished whether the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished	certain ion dd bill of dly for	A A A A A A A	73 73 73 73 73 73 73 73 73 73 73 73 73	NN 1 4 4 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
(g) Oral agreement to postpone da (h) Suit on—Limitation—Art. 73 (i) What is (i) Bill of inchange in which of exchange payable on (ii) Bill of exchange payable on exchange payable on de Suit based on —Limitation Suit on (a) Bill of exchange never present payment—Limitation (b) Illustrative cases governed by (c) Limitation—Radiduary provisic (d) Limitation—Starting point (o) Summary suit—Limitation	te of payment- and Art. 70 di n m time is fixed demand le at sight, y mand ed for acceptat Art. 80 on of	Limitate tinguished, whether the tinguished whether the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished the tinguished	certain ion dd er bill bill of A 8	A A A A A A A A A A A A A A A A A A A	78 73 73 73 73 73 73 73 73 73 73 73 73 73	NN
(g) Oral agreement to postpone da (h) Sunt on—Limitation—Art. 73 (i) What is (i) Bill of exchange in which of exchange payable on (ii) Bill of exchange payable on de exchange payable on de exchange payable on de —Sunt based on—Limitation —Suit on (a) Bill of exchange never present payment—Limitation (b) Illustrative cases governed by (c) Limitation—Realduary provisit (d) Limitation—Starting point (d) Summary suit—Limitation (f) Whether can be instituted as as	te of payment- and Art. 70 di n m time is fixed demand le at sight, y mand ed for acceptat Art. 80 on of	Limitate tinguished, whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether w	certain ion dd bill of A 8	A A A A A A A A A A A A A A A A A A A	78 73 73 73 73 73 73 73 73 73 73 73 73 73	NN
(g) Oral agreement to postpone da (h) Suit on—Limitation—Art. 73 (i) What is (i) Bill of axchange in which of exchange payable on (ii) Bill of exchange payable on exchange payable on de —Suit based on —Limitation —Suit on (a) Bill of exchange never present payment—Limitation (b) Illustrative cases governed by (c) Limitation—Residuary provisic (d) Limitation—Starting point (o) Summary suit—Limitation (f) Whether can be instituted as as Whether includes hundi	te of payment- and Art. 70 di n m time is fixed demand le at sight, y mand ed for acceptat Art. 80 on of	Limitat stinguished, whether whether street but or	certain ion dd aer bill bill of A 86	A A A A A A A A	78 73 73 73 73 73 73 73 73 73 73 73 73 73	NN
(g) Cral agreement to postpone da (h) Sunt on—Limitation—Art. 73 (i) What is (i) Bill of nxchange in whice of exchange payable on (ii) Bill of exchange payable on exchange payable on de —Sunt based on—Limitation —Suit on (a) Bill of exchange never present payment—Limitation (b) Illustrative cases governed by (c) Limitation—Residuary provisit (d) Limitation—Starting point (e) Summary suit—Limitation (f) Summary suit—Limitation (g) Summary suit—Limitation (g) Summary suit—Limitation (g) Summary suit—Limitation (g) Summary suit—Limitation (g) Summary suit—Limitation (g) Summary suit—Limitation (g) Summary suit—Limitation (g) Summary suit—Limitation (g) Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplie	te of payment- te of payment- and Art. 70 di n nn time is fix demand lo at sight, v mand bed fir acceptar Art. 80 on nf numary suit	Limitatatinguished, whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether wh	certain ion dd er bill bill of A 6	A A A A A A A A A A A A A A A A A A A	78 73 73 73 73 73 73 73 73 73 73 73 73 73	NN
(g) Oral agreement to postpone da (h) Suit on—Limitation—Art. 73 (i) What is (i) Bill of axchange in which of exchange payable on (ii) Bill of exchange payable on exchange payable on de —Suit based on —Limitation —Suit on (a) Bill of exchange never present payment—Limitation (b) Illustrative cases governed by (c) Limitation—Residuary provisic (d) Limitation—Starting point (o) Summary suit—Limitation (f) Whether can be instituted as as Whether includes hundi	te of payment- te of payment- and Art. 70 di n nn time is fix demand lo at sight, v mand bed fir acceptar Art. 80 on nf numary suit	Limitatatinguished, whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether wh	certain ion dd er bill bill of A 6	A A A A A A A A A A A A A A A A A A A	73 73 73 73 73 73 73 73 73 73 73 73 73 7	NN NN NN NN NN NN NN NN NN NN NN NN NN
(g) Cral agreement to postpone da (h) Sunt on—Limitation—Art. 73 (i) What is (i) Bill of nxchange in whice of exchange payable on (ii) Bill of exchange payable on exchange payable on de —Sunt based on—Limitation —Suit on (a) Bill of exchange never present payment—Limitation (b) Illustrative cases governed by (c) Limitation—Residuary provisit (d) Limitation—Starting point (e) Summary suit—Limitation (f) Summary suit—Limitation (g) Summary suit—Limitation (g) Summary suit—Limitation (g) Summary suit—Limitation (g) Summary suit—Limitation (g) Summary suit—Limitation (g) Summary suit—Limitation (g) Summary suit—Limitation (g) Summary suit—Limitation (g) Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplied Supplie	te of payment- te of payment- and Art. 70 di n nn time is fix demand lo at sight, v mand bed fir acceptar Art. 80 on nf numary suit	Limitatatinguished, whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether whether wh	certain ion dd er bill bill of A 6	A A A A A A A A A A A A A A A A A A A	73 73 73 73 73 73 73 73 73 73 73 73 73 7	NN NN NN NN NN NN NN NN NN NN NN NN NN

Bombay District Municipal Act—(Contd.)	
-S. 167-Whether expressly excludes applicability of S. 15 of Act	
in respect of suit against municipality	S 29 N 4
Bumbay Rent Act	
-Payment of promium by tenant to landland prohibited undor-	
City to a street and a street and a street and	A 120 N 2
	A 120 N 2
Bond	
-Administration hond	-
(a) Bond to the effect that administrator would file inventories	
at certain periods and would administer assets of deceased	
person—Death of administrator without performing these conditions—Suit to enforce such bond—Limitation—Start.	
	A 120 N 16
O Could be a second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the sec	A 68 N 2
(a) Suit on—Limitation—Cases governed by residuary Art. 120:	A 120 N 16
-Bond by Hindu bearing native date only, for repayment of money	11 120 11 10
within one year — Suit nn bond — Limitation, how to be com-	
puted	S 25
Bond payable on demand-Suit nn-Limitation	A 67 N 2
Conditional bond	
(a) Meaning of	A 68 N 1
	68; A 68 N 3
(c) Suit on administration bond by assignce of bond - Limita.	
tion	A 68 N 2
(d) What is	
(1) Administration bond, whether conditional hand within	
Art. 68	A 68 N 1
(ii) Bond executed by custodian in attached property under Civil P. C. O. 21, R. 43, whether conditional	
bond whether conditional	A 68 N 1
(iii) Bond executed by surety under Guardians and Wards	A 05 M 1
Act, whether conditional bond	A 65 N 1
(iv) Bond given by grantee of succession certificate under	
Indian Succession Act, whether conditional bond	A 69 N 1
(v) Bond which stipulates that money due under should	
be paid before payment of another bond, whether con-	
ditional bond	A 68 N 1
(vi) Mortgage bond providing for immediate payment of	
principal and interest in default of regular payment	1 00 31 1
of interest, whether conditional bond ——Definition of—If exhaustive	A 68 N 1 S 2 Cl 3 N 1
	A 68 N 1
	A 03 N 1
ing plaintiff against fraud of third party does not make suit one	
for relief on ground of fraud	A 95 N 4
Instalment bond	
(a) Condition that debtor will pay a certain sum of money	
monthly and that if five consecutive instalments are not	
paid creditor might call for payment of whole amount-	
Non-payment of instalments, if a constantly recurring	
cause of action	8 23 N 19
(b) Creditor, if can prove that payment was made for his deht to show that he had waived default of instalments	S 20 N 21
to show that he had waived default of instalments	3 20 N 21

Bo

ond_Instalment bond_(Contd.)	
(c) Evidence to show that certain instalments were paid and	
creditor waived default—Admissibility of	S 20 N 36
(d) Registered bood—Snit on—Limitation	A 74 N 3
(e) Suit for second iostalmeot under the impression that first	
instalment was time-barred—Plaint returned for presenta-	
tion through proper Court-Plaiotiff including first instal-	
ment also in re-presenting plaint—Second suit, if saved by	
first suit in respect of first instalment	S 14 N 18
(f) Suit on	
(i) Art 74 and Art 75 distinguished	A 74 N 2
(11) Limitation—Starting point A 74; A 74 N 2	, A 116 N 7
(iii) No default clause—Limitation	A75NO
(iv) Special and general provisions of limitation	A 75 N 2
/ \ T71	A 75 N 4
(h) With a default clause	
(1) Application for execution of decree payable by instal-	A 75 N 3
ments—Limitation (11) Bond containing not only a default clause but obligee	
also having option to demand payment	A 75 N 8
(a) Dimitation—English law	A 75 N 8
(iii) Bond creating charge on immovable property (a) Suit to enforce charge—Limitation	A 75 N 21
(b) Suit to enforce personal remedy under bond—	
Limitation—Where bond is registered	A 75 N 21
(iv) 'Default clause,' if penalty withio Contract Act, S. 74:	A 75 N 19
(v) "Default", what amounts to within Art. 75	A 75 N 6
(vi) Demand of overdue instalment, whether waiver of	
default clause so as to start time running from fresh	
default in respect of which there is no waiver	A 75 N 12
(vii) Limitation—Starting point—Burden of proof as to	
waiver of default clause which postpones starting	
point to fresh default in respect of which there is no	18
waiver	A 75 N 16
(viii) Overdue instalment-Demand of-Whether waiver	A 75 N 12
of default clause within Art. 75	A 70 N 1-
(1x) Part payment of jostalment or payment generally	
towards account, whether waiver of default clause so	
as to start time ruccing from fresh default in respect	A 75 N 13
of which there is no variver	Y 10 Y
(x). Payment of certain instalments made and accepted by	S 20 N 36
creditor—Time, wheo begins to run	A 75 N 20
(x1) Registered bond—Suit oo —Limitation—Starting point:	••
(xii) Suit on	
(a) Bond containing not only a default clause but	
where obligee has also option to demand pay-	A 75 N 8
ment_Limitatioo Wairer	

(b) Default clause and default taking place-Waiver

of default-No fresh default-Limitation (c) Default clause but oo default taking place-Limi-

(d) Essentials of, applicability of Art. 75

(c) Limitation-Art. 75 and S. 20

A 75 N 7

A 75 N G A 75 N 3

A 75 N 22

•••

	-,20
Bond—Instalment bond—With a default clause—Suit on—(Contd., (/) Limitation—Starting point A) 75. A 75 N 10
(q) On default, whole amount payable on demand—	·
Limitation—Starting point (h) Provision of, in Punjab Loans Limitation Act	A 75 N 9 A 75 N 22
(xiii) Suit on verbal contract under which money is pay-	
able in instalments—Limitation	A 75 N 3
(xiv) Surety for—Suit against—Limitation—Starting point (xv) Waiver of default	A 75 N 14
(a) What constitutes, so as to start time running from	
fresh default in respect of which there is no waiver	A 75 N 11
(b) Whether bars suit on second default	A 75 N 18
(c) Whether can be gathered from pleadings	A 75 N 17
——Meaning of	S 2 Cl 3
(b) Bond and agreements to do specified acts-Distinction	S 2 Cl 3 N 2
	S 2 Cl 2 N 3
(d) Stamp Act, definition of bond in S	2 Cl 3 N 1, 2
—Money advanced under—Money advanced for goods to be delivered —Goods not delivered—Suit for money so advanced—Limitation:	A 51 N 1
Mortgage bondMortgage bond in benamidar's nameMoney due	
upon—Money received by benamidar—Suit for, by real owner—	A 62 N 24
-Registered bond-Suit on-Limitation A 66 N 4; A 67 N	3; A 80 N 1
——Security bond	
(a) Executed by gnardian—Suit to recover moneys out of pro- perties given as security by guardian—Limitation: A 18	2 N 8, F N 2
(b) Money charged under—Suit for—Limitation	A 132 N 8 A 67 N 4
(c) Suit upon—Limitation	A 01 M 4
-Recovery of Suit for Limitation applicable, whether same as	
applicable to suit for compensation for breach of registered con-	A 116 N 7
Single bond	
(a) Bond specifying day of payment—What is—Limitation: A	66; A 66 N 3
(b) Meaning of (c) Suit on	A 66 N 2
(6) Suit on	A 66 N 5
	A 67 N 2
where no date is specified for payment-Limitation :	A 67 N 2
(iv) Suit on single bond providing for immediate payment	
of principal and interest on default of regular pay- ment of interest—Limitation	A 68 N 1
(v) Where no day is specified for payment-Limitation-	
Starting point A 67; A 67 N (yi) Whole amount of bend is to become due on default of	2, A 67 N 5
regular payment of interest-Limitation-Starting	
point	A 66 N 3

Bond-(Contd.)					
Suit on					
(a) Bond providing for rep ration of stipulated					A 80 N I
tion	•••	'nn future d	ato nn be	appening	
		•••	•••	•••	A 80 N 1
sum before certain de	sta hon	under oblige	tion pays	certain Limita	
tion		would beco	шо толи—	A 8	N 1, FN 7
(d) Bond providing that :	monev	due mon it	would be		
the time of payment					A 80 N 1
(e) Bond with default cla			ion on c	reditor's	
part to claim full pay	ment_	-Limitation		•••	A 80 N 1
(f) Bond with stipulation payable on default of					A 80 N 1
(g) Limitation					30; A 80 N l
(i) Residuary provis	ion of				A 80 N 1;
(ii) Starting point—	Cases g	overned by re	siduary A	rt, 00	A 80 N 2
(b) Where relief claimed i	s enfor	ement of lien	against j	property	A 80 N 1
——Suit to recover—Bond lost of	r nami	red by thatt	or diabon	ost mis.	-
appropriation or conversion					A 95 N 4
-Surety bond-Enforcement	of—Exe	eution applic	ation for-		A 85 N 1
cation under Civil P. C., O	. 21, R	. 43—Limitat	ion	***	Y 00 W
Book debt					
-Attachment of-Suit for rec	ATTA THE #	hamad II hamm	d bu atta	aliment'	S 15 N 12
-Decree-holder attaching bo					
purchasing it in conrt aucti	ion—S:	bseanent enit	to recove	r book.	
debt-Whether on same ca					S 14 N 18
Britiah India					
-Ahsence from, of defendant-	Sugne	neion of limits	ation		S 9 N 3
If includes Aden		naton de mante	*****		SINI
-If includes British Burma	•••	•••	•••		S1 N1
- If includes Civil Stations an	d Canto	nmant areas		•••	SINI
-If includes Native States of	India	oningine areas		•••	SINI
-If includes Scheduled District		•••	•••	•••	SINI
If includes Singapore	ULS	•••	•••	•••	SINI
— If includes the Laccadivo Is	landa	•••	•••		SINI
-Meaning of		•••	•••		S 1 N l
Buddhlst Law	•••		•••		
Religions or charitable endos	rmont	Downerty com	nvised in	_Whe-	- 40
ther property vested in tru	st for s	pecific purpose	***	•••	S 10
Burden of proof					
Acknowledgment by agent-	-Onus i	of proof that	person by	whom	
acknowledgment has been	made	on behalf of a	nother w	as auly	S 19 N 50
authorized to do so is on pl	amtiti	***	***	•••	

Burden of proof—(Contd.)	
—Acknowledgment of liability—Oous of proving that acknowledgment was made before oxprry of limitatioo—On whom rests	S 19 N 76
Easement	
(a) Burden is oo claimant to casement to prove all points neces-	
sary to establish easement	S 26 N 18
(b) Obstruction proved to have taken place—Burden is on per- son obstructed to show that he did not submit to or ac-	
quiesce in it	S 26 N 18
Exclusion of time on ground of defendant's absence from British India—Burden on plaintiff	S 13 N 8
—Fraud as an exception to the bar of limitation—Burden of prov-	219119
ing fraud	S 18 N 7
—Fraud, plea of	A 95 N 17
- Onus of proving that suit is saved from bar of limitation on	
account of acknowledgment of liability is on plaintiff	S 19 N 76
- Payment as ground for exemption-Admission by promisor that	
part payment was made by him on particular date—Admission	S 20 N 35
shifts burden of proof ——Platot prima facte barred—Proof to support of circumstances say.	5 20 M 80
Tarde firms tack darred - 1 tool to suppose of circumstances say.	S 3 N 38
_	
period of limitation	S 18 N 7
——Suit prims facie barred (a) Plaintiff alleging that it is not barred by virtue of payment	
made under S. 20—Onus is on plaintiff to show it	S 20 N 35
(1) In (1)	8 3 N 38
-	
	C 0 N 00
admitted—Whether hes on defendant	8 8 N 88
Burma Courts Act	
Application under-Delay in filing-Excuse of	S 5 N 4
- Section 49-Appeal under-From Court of Becorder, Rangoon, to	
High Court—Limitation	A 156 N 3
Business	
—Particular business, meaning of, within Art. 84	A 84 N 3
Bye-law	
extra fee in case of cattle grazed without permission, whether	
bye-law within Art. 6	A 6 N 3
Call	
See Company	
Carrier	
—Carrier and customer—Rolatiooship of—What constitutes	A 30 N 2
—Common carrier—Meaning of	A 30 N 2
Conversion byCompeosation for-Suit for-Limitation	A 48 N 8
—Meaning of	A 30 N 2
Position of Whether changed to that of ballee by consignee's	1 00 37 0
delaying to take delivery of goods after arrival	A 30 N 2

C. P. Land Revenue Act	
Section 60 (4) (1)-Suit under-Legal disability-Extension on	
G 11 GG G 1 3 F1 11 11	5 N 20 F N 2
	A 120 N 50
Section 160 (a) Suit for recovery of share of proprietary profits by minor	
plaintiff—Extension on ground of micority, if availableS	6 N 20 F N 3
(b) Suit for share of village profits by micor plaintiff—S. 6,	
Limitation Act, applies	S 29 N 5
C. P. Tenancy Act	
Cases arising under-S. 28, Limitation Act, if applies	S 28 N 3
——Suit for rent — Based on registered lease deed — Limitation — Whether special period of limitation under Central Provinces	
Tenancy Act overrides provisions of Limitation Act for suit for	
compensation for breach of registered contract	A 116 N 8
Certificate	
-Sale certificate : See under Sale	
Certification	
Under O 21 R 2, Civil P. C., by decree-holder-Limitation	A 181 N 18
—Under O. 21 R. 2, sub-1 1, Civil P. C	
(a) Limitation	A 174 N 3
(b) Whether application within Art. 181	A 174 N 3
Cess	
	A 110 N 2
-Road cess payable to zamindars by holder of service of inam under	A HUN 2
him subject to such payment—Whether rent	A 110 N 2
-Road cess under Madras Local Boards Act-Arrears of - Interest	A 12 N 8
of defaulter sold for—Remedy of incumbrancer —Suit against Government for recovery of cess paid under protest in	A 12 N 6
respect of a certain year—Suit dismissed in trial Court but	
· decreed in Appellate Court — Circumstances, if bring about can-	
cellation and revival of plaietiff's cause of action for similar suit against Government in respect of cess paid for a subsequent year:	S 9 N 11
—Suit for recovery of cess from intermediate land-holders under	22 W 11
S. SS, Madras Local Boards Act—Limitatioo	A 120 N 43
Charge	
"Charged upon immovable property" - "Charged" meaning of in	
Art. 132	A 132 N 3
——Created on shares of other co-mortgagors by one co-mortgagor paying off mortgage—Enforcement of — Suit for — Limitation—	
Starting point	A 132 N 10
- L'inforcement of Suit for Legacy charged upon property-Limi.	
tation applicable, whether same as applicable to suit for legacy —Interest charged upon immovable property—Suit for—Limitation:	A 123 N 9 A 63 N 4
—On immovable property	.1 00 11 4
(a) Created by award—Enforcement of—Suit for — Limitation :	A 132 N 6
(b) Created by decree—Enforcement of—Suit for—Limitation: (c) Created by instalment bood with default clause — Enforce.	A 132 N 5
ment of—Suit for—Limitation	A 75 N 21

Charte On immemble manuals (Carta)
Charge—On immovable property—(Contd.) (d) Enforcement of — Snit for — By principal against agent —
Limitation A 89 N 3
(e) Interest due on contract of mortgage, whether charge on
immovable property A 133 N 13
(f) Suit to enforce indemnity charged upon immovable property —Limitation A 63 N 6
On property created by payment on behalf of defendant — Suit for money paid—Limitation A 61 N 17
tor money para—minitation
—Suit to enforce hypothecation of property to secure payment of grain—Limitation A 120 N 2, F N 2
Cheque
—Meaning of S 2, Cl 2 N 1
Chota Nagpur Encumbered Estates Act
—Snit under—S. 15, Limitation Act, applies S29 N3
Chota Nagpur Tenancy Act
The state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the s
of—Suit for—Limitation—Starting point A 120 N 50
Civil Court No. 13 N3
Mamiatdar's Court, Whether Civil Court
Receiver, whether Court
Givil Procedure Code (5 of 1908)
Appeal to District Coort — Limitation — Starting point: A 152: A 153 N 9.
. A 152 N 8, A 163 M
A 152 N S, A 153 N S
——Appeal to High Court (a) Applicability of Art. 151, Art. 153 and Art. 156 A 155 N 2
— Appeal to High Court (a) Applicability of Art. 151, Art. 153 and Art. 156 (b) From decree A 155 N 2
—Appeal to High Court (a) Applicability of Art. 151, Art. 153 and Art. 156 (b) From decree (i) Amendment of decree, whether gives fresh starting
A 159 N 8, A 153 N 8 Appeal to High Court (a) Applicability of Art. 151, Art. 153 and Art. 156 (b) From decree (i) Amendment of decree, whether gives fresh starting project for such appeal
A 155 N 9 A 156 N 9 (a) Applicability of Art. 151, Art. 153 and Art. 156 (b) From decree (i) Amendment of decree, whether gives fresh startiog point of the proof to such appeal (n) Where decree is reviewed—Limitation—Startiog point:
A 155 N 9. A 156 N 9. (a) Applicability of Art. 151, Art. 153 and Art. 156 A 156 N 9. (b) From decree (i) Amendment of decree, whether gives fresh starting point for such appeal (ii) Where decree is reviewed—Limitation—Starting point restored by High Coort—Limitation—Starting point restored by High Coort—Limitation—Starting point A 156 N 91
A 155 N 9. Appeal to High Court (a) Applicability of Art. 151, Art. 153 and Art. 155 A 156 N 9. (b) From decree (i) Amendment of decree, whether gives iresh starting point for such appeal Starting point A 156 N 9. (ii) Where decree is reviewed—Limitation—Starting point: A 156 N 9. A 156 N 9. A 156 N 9. A 156 N 9. A 156 N 9.
A 152 N S, A 153 N S (a) Applicability of Art. 151, Art. 153 and Art. 156 A 156 N S (b) From decree (i) Amendment of decree, whether gives fresh starting polot for such appeal (ii) Where decree is reviewed—Limitation—Starting point: restored by High Coort—Limitation—Starting point: (iv) Where the party against whom decree is passed dies— Limitation—Starting point: A 156 N 11 A 156 N 11 A 156 N 11
A 155 N 9. Appeal to High Court (a) Applicability of Art. 151, Art. 153 and Art. 156 (b) From decree (i) Amendment of decree, whether gives fresh startiog point for such appeal (ii) Where decree is reviewed—Limitation—Starting point: (iii) Where ex parte decree is set aside by trial Court hat restored by High Coort—Limitation—Starting point: (17) Where the party against whom decree is passed dies— Limitation—Starting point (7) Where there are several decrees io same suit—Limitation—Starting point:
— Appeal to High Court (a) Applicability of Art. 151, Art. 153 and Art. 156 (b) From decree (i) Amendment of decree, whether gives fresh starting point for such appeal (ii) Where decree is reviewed—Limitation—Starting point restored by High Coort—Limitatioo—Starting point to Where the party against whom decree is passed dies—Limitation—Starting point (r) Where there are several decrees io same suit—Limitation—Starting point (r) Where there are several decrees io same suit—Limitation—Starting point (a) A 155 N 10 A 156 N 10
— Appeal to High Court (a) Applicability of Art. 151, Art. 153 and Art. 156 (b) From decree (i) Amendment of decree, whether gives fresh starting point for such appeal (u) Where decree is reviewed—Limitation—Starting point: (iii) Where ex parte decree is set side by trial Court hat restored by High Coort—Limitatioo—Starting point (iv) Where the party against whom decree is passed dies— Limitation—Starting point (v) Where there are several decrees io same suit—Limitation—Starting point (v) Where there are several decrees io same suit—Limitation—Starting point (e) From order — Where judgmeot is given but order is not drawn np—Limitation—Starting point A 156 No.
A 152 N 3, A 155 N 2 (a) Applicability of Art. 151, Art. 153 and Art. 156 (b) From decree (i) Amendment of decree, whether gives fresh starting point (ii) Where decree is reviewed—Limitation—Starting point (iii) Where ex parte decree is set aside by trial Court had restored by High Coort—Limitatioo—Starting point (iv) Where the party against whom decree is passed dies—Limitation—Starting point (v) Where there are several decrees io same suit—Limitation—Starting point (e) From order — Where judgment is given but order is not drawn up—Limitation—Starting point A 156 N 5
A 152 N S, A 153 N S (a) Applicability of Art. 151, Art. 153 and Art. 156 (b) From decree (i) Amendment of decree, whether gives fresh starting point (ii) Where decree is reviewed—Limitation—Starting point (iii) Where ex parte decree is set aside by trial Court hat restored by High Coort—Limitatioo—Starting point (17) Where there are several decrees is passed dies—Limitation—Starting point (2) Where there are several decrees io same suit—Limitation—Starting point (2) From order—Where judgment is given but order is not drawn np—Limitation—Starting point (3) From order of Subordinato Court refusing leave to appeal to Privy Council—Provision for such nppeal—Limitation: A 156 N 168 N 17 N 17 N 17 N 17 N 17 N 17 N 17 N 1
A 152 N S, A 153 N S (a) Applicability of Art. 151, Art. 153 and Art. 156 (b) From decree (i) Amendment of decree, whether gives fresh starting point (ii) Where decree is reviewed—Limitation—Starting point (iii) Where ex parte decree is set aside by trial Court hat restored by High Coort—Limitatioo—Starting point (17) Where there are several decrees is passed dies—Limitation—Starting point (2) Where there are several decrees io same suit—Limitation—Starting point (2) From order—Where judgment is given but order is not drawn np—Limitation—Starting point (3) From order of Subordinato Court refusing leave to appeal to Privy Council—Provision for such nppeal—Limitation: A 156 N 168 N 17 N 17 N 17 N 17 N 17 N 17 N 17 N 1
A 152 N 3, A 153 N 5 (a) Applicability of Art. 151, Art. 153 and Art. 156 (b) From decree (i) Amendment of decree, whether gives fresh startiog point (ii) Where decree is reviewed—Limitation—Starting point (iii) Where ex parte decree is rest aside by trial Court hat restored by High Coort—Limitation—Starting point (17) Where the party against whom decree is passed dies—Limitation—Starting point (2) Where there are several decrees io same suit—Limitation—Starting point (2) Where there are several decrees io same suit—Limitation—Starting point (2) From order—Where judgmeot is given but order is not drawn np—Limitation—Starting point (3) From order of Subordinata Court rotusing leave to appeal to Privy Council—Provision for such appeal—Limitation: A 156; A 153 N 16 (4) Limitation—Starting point (4) Time, whether extended by virtue of S. 4, Limitation Act. (5) A 156 N 12
A 152 N 3, A 153 N 5 A 156 N 9 A 156 N 9 (b) From decree (i) Amendment of decree, whether gives fresh startiog point of the project for such appeal (ii) Where decree is reviewed—Limitation—Startiog point restored by High Coort—Limitation—Starting point (iv) Where the party against whom decree is passed dies—Limitation—Starting point (v) Where there are several decrees io same suit—Limitation—Starting point (v) Where there are several decrees io same suit—Limitation—Starting point (v) Where there are several decrees io same suit—Limitation—Starting point (v) From order — Where judgment is given but order is not drawn np—Limitation—Starting point (v) From order of Subordinata Court refusing leave to appeal to Privy Council—Provision for sneh appeal—Limitation: A 156; A 156 N 16 (o) Limitation—Starting point (v) Time, whether extended by virtue of S. 4, Limitation At (a) A 156 N 12 A 153 N 3
A 152 N 3, A 153 N 5 A 156 N 9 A 156 N 9 (b) From decree (i) Amendment of decree, whether gives fresh startiog point of the project for such appeal (ii) Where decree is reviewed—Limitation—Startiog point restored by High Coort—Limitation—Starting point (iv) Where the party against whom decree is passed dies—Limitation—Starting point (v) Where there are several decrees io same suit—Limitation—Starting point (v) Where there are several decrees io same suit—Limitation—Starting point (v) Where there are several decrees io same suit—Limitation—Starting point (v) From order — Where judgment is given but order is not drawn np—Limitation—Starting point (v) From order of Subordinata Court refusing leave to appeal to Privy Council—Provision for sneh appeal—Limitation: A 156; A 156 N 16 (o) Limitation—Starting point (v) Time, whether extended by virtue of S. 4, Limitation At (a) A 156 N 12 A 153 N 3
A 152 N 3, A 153 N 5 (a) Applicability of Art. 151, Art. 153 and Art. 156
A 152 N 3, A 155 N 2 Applead to High Court (a) Applicability of Art. 151, Art. 153 and Art. 156 (b) From decree (i) Amendment of decree, whether gives fresh startiog point of the core is reviewed—Limitation—Startiog point restored by High Court—Limitation—Starting point (11) Where the party against whom decree is passed dies—Limitation—Starting point (1) Where there are several decrees io same suit—Limitation—Starting point (2) From order — Where judgmeot is given but order is not drawn np—Limitation—Starting point (3) From order of Subordinant Court refusing leave to appeal to Privy Council—Provision for such nppeal—Limitation: A 153, A 153 N 1 (2) Limitation—Starting point (3) Limitation—Starting point (4) Time, whether extended by virtue of S. 4, Limitation Act A 156 N 5 (5) Limitation—Art. 151, Art. 152 and Art. 156, distinguished: A 156 N 3, A 166 N 3 (5) Under Civil Procedure Code"—Meaning of A 156 N 3, A 166 N 3
A 152 N 3, A 153 N 6 A 156 N 9 (a) Applicability of Art. 151, Art. 153 and Art. 156 (b) From decree (i) Amendment of decree, whether gives fresh startiog point of the core is reviewed—Limitation—Starting point restored by High Coort.—Limitation—Starting point (10) Where the party against whom decree is passed dies—Limitation—Starting point (10) Where there are several decrees io same suit—Limitation—Starting point (10) Where there are several decrees io same suit—Limitation—Starting point (10) From order of Starting point (11) From order of Starting point (12) From order of Starting point (13) From order of Starting point (14) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of Starting point (15) From order of
A 152 N 3, A 155 N 2 Appeal to High Court (a) Applicability of Art. 151, Art. 153 and Art. 156 (b) From decree (i) Amendment of decree, whether gives fresh startiog point for such appeal (ii) Where decree is reviewed—Limitation—Starting point: (iii) Where ex parte decree is set aside by trial Court hat restored by High Coort—Limitatioo—Starting point: (iv) Where the party against whom decree is passed dies— Limitation—Starting point (v) Where there are several decrees io same suit—Limitation—Starting point: (e) From order—Where judgment is given but order is not drawn np—Limitation—Starting point (d) From order of Subordinata Court refusing leave to appeal to Privy Council—Provision for such nppeal—Limitation: A 156; A 156 N 12 (i) Time, whether extended by virtue of S. 4, Limitation Act. A 156 N 12 —Appeal under (a) Limitation—Art. 151, Art. 152 and Art. 156, distinguished: (b) "Under Civil Procedure Code"—Meaning of A 156 N 3; A 166 N 3 —Application for order to restore application for review dismissed for default

Civil Pro. Code—(Contd.)	
If interprets Limitation Act Preamb	le N 18
-Order under - To restore application for review dismissed for	
default—Provision for A 10	50 N 1
Summary suit—Application for leave to appear and defend	
(a) Applicability of Art. 159, Limitation Act, and Rangoon	
	59 N 4
(b) Limitation—Starting point A 159; A 159 N 1, A 15	9 N 3
——Summary suit under — Appearance and defence in — Leave for— Application for	
(a) Chamber Judge, whether invested with discretion to extend	
	9 N 2
(b) Time, whether can be extended by virtne of Sec. 5, Limita-	
tion Act A 1	59 N 2
	59 N 2
Whether a general law 8	29 N 6
Section 47-Order in execution proceedings-Case falling under	
S. 47—Remedy of person against whom order is passed is by way	
of appeal and not by suit—Art. 11-A not applicable	A N
—Section 48	
(a) Fraud referred to therein — Whether same as fraud referred	
to in S. 18, Limitation Act S18 (b) Period fixed by — Whether "prescribed period" within	8 N 15
	5 N 3
(c) Period of 12 years—Whether "period prescribed" within	.0 11 0
the meaning of Limitation Act S	29 N 6
(d) Period of 12 years fixed under-Whether can be extended	
on ground of minority or other disability of decree-holder: S	N 21
(e) Period of 12 years referred to in S. 48—Whether period of	
	4 N 9
(f) Period of 12 years under—Whether period prescribed within S 19, Limitation Act	N 15
(g) Period under—Whether prescribed period within the mean-	14 10
	N 10
(h) Time fixed by-Whether can be regarded as time limited	
for instituting a snit or making an application within Sec-	
	N 15
-S. 73 sub-s. 2 -Suit for refund of money wrongly paid to defen-	
dant by executing Court engaged in rateable distribution of assets of judgment debtor—Limitation A 62	N 26
	11 20
	3 N 3
	1 N 2
-8. 109-" Final order "-Order extending time and admitting	
7t G1 owley	N 45
-S. 109 (a)—Order " passed on appeal "—Order dismissing appeal	
as barred after refusing to extend time-If order "passed on	37.40
appeal" S 5	N 45
	3 N 3
	4 N 2

OLALIAN INDIA		2100
Civil Pro. Code-0. 21 R. 103-Suit under-(Contd.)		
(iv) Person against whom order passed benamidar another—Suit by benamidar within time—Real		
son impleaded after one year of order—Suit is		
barred		A 11-A N 4
(v) Person in whose favour order is passed is not bound sue within one year		A 11.A N 4
(vi) Reason for short period of limitation		A 11-A N 2
(vii) Right of suit given to decree-holder or third party not to judgment-dobtor		Λ 11.Λ Ν 4
(viii) Right to "present possession"—Meaning of		A 11-A N 9
(ix) Right to present possession claimed only as con		
quential relief—Art. 11-A not applicable (x) Suit by plaintiff not in his character as auction.p		A 11.A N 9
chaser—Art. 11-A not applicable		A 11.A N 9
(xi) Suit not brought within one year. Effect	A	11.A N 10
Sch. II, Para. 20-Application under-Whether suit	S :	2, Cl 10 N 1
Civil rights		
Exclusion from—Suit for compensation—Limitation	•••	A 24 N 1
Claim		A 47 N 4
		A 47 N 4
Suit by person against whom order passed: See under Atta- ment	ch-	
Porson when can be said to claim under another	•••	A 47 N 4
Claim suit		
——Adverse order in—What is	••••	A 11 N 4
—Claim by Official Receiver after attachment before judgment insolvent's property.—Suit by receiver to set ando order on si	of	
alasm Tametatan	***	A 120 N 6
Claim suit not governed by Art 11 or Art. 13Limitation	•••	A 120 N G
Claim to property attached-Withdrawal of attachment prior enquiry into claim or objection-Effect of		A 11 N 7
Order in	•••	AIIN
(a) Judgment debtor, when bound by such order	•••	A 11 N 4
(b) Person against whom there is such an order —Who is ——Order under Civil P. C., disallowing claim—Withdrawal or ren	···	A 11 N 4
val of attachment subsequent to order desallowing claim		
Effect of Corder under Presidency Small Cause Courts Act, S. 28, disallow	•••	A 11 N 6
claim—Withdrawal or removal of attachment, subsequent		
order disallowing claim—Effect of		A 11 N 6
—Suit on behalf of minor under Court of Wards—Suit with necessary sanction—Order in such suit, whether binding on min		A 11 N 5
Club	· ·	" II W
Suit by or against-Necessary parties		S 22 N 21
Co-debtors		
—One debtor authorizing the other to make payment on behalf both—Payment made by the other—It does not matter t	ıat	
money paid does not belong to the former but belongs to that ter		S 20 N 12

S 21 N 7

A 141 N 3

...

——Payment by one co-debtor of more than his share of joint debt— Right to sue for contribution against other co-debtors

Construction of Cult for Timitation

Codicil

Co-debtors-(Contd.)

——Construction of—Suit for—Limitation	•••	• • •	A 141 N 3
Go-heir			
Co.heirs, whether persons jointly entitled to eue	within S. 7	•••	' S 7 N 23
Mahomedan co-beir			
(a) Co-heir receiving deht due to deceased—S		co-	4 00 37 0
heirs for their share of money—Limitation		:	A 62 N 9
(h) Suit to recover debt due to deceased realize _Limitation			A 123 N 4
Of Buddhist dying intestate—Suit for share of pro-			A 123 N 4
-Of Hindu dying intestate-Suit for partition and	possession-	Suit	
against other co heirs - Limitation - Where	heirs constit	tute	A 123 N 4
members of joint family Of Mahomedan dying intestate — Suit against	athon hairs	for	
share of property of intestate—Limitation	other neits		A 123 N ⁴
Companies Act			85N4
——Appeals and applications under —Delay in filing—		***	9011
_ ribution_Death		ıt—	A 177 N 3
as party—Limita	tion	***	181 N 23
Outline of County County to Secure Autline time	for an aution		
 Order of Court enforceable as decree—Application order, if governed by Limitation Act 	tor execution	1 01	S 3 N 13
Right of directors under—Right to make calls up	oon members	in	
respect of moneys unpaid on their shares-Suit of	n-Limitatio	on:	A 112 N 2
-S. 156-Liability under, to pay money due on shi	ares of compa	any	
in liquidation-Enforceability of, after suit for	such money	18	S 3 N 13
barred	oh to one nor		
 S. 186—Application under, whether directly subject of limitation 	ee to may her		S 3 N 13
S. 235—Misfeasance application under—Limitation	n		A 36 N 6
S. 235—Suit by liquidator against directors of 1		ny	A 116 N 3
on contract partly in writing and registered-Li	mitation	•••	A 116 N 3
——S. 247—Application for review under—Limitation	applicable		Cl 10 N 1
(1882), S. 214-Application under-Whether suit		83,	Cl 10 N 1
(1913), S 235 (3)-Application under-Whether s	uit:	S 2,	01 10
Company	•	_	
- Claim against company being wound up by Court-	_Institution	of,	S 3
when effected	•••	•••	
Claim against company in voluntary liquidation m	ther suit	"S 3.	Cl 10 N 1
ing not instituted by presentation of plaint—Who ——Company in liquidation—Proceedings by or again	et_Timitatio	on,	
how to be calculated			S 3 N 13
- Contributory, liability of Suit for money barred-	Liability, if c	an	S 3 N 26
be enforced against him		•••	
— Director of (a) Whether agent			A 90 N 3
(b) Suit against, for neglect or misconduct—Lim	• • • •	•••	A 90 N S
the admitted for neglect or imaconduct—than			

— Directors (a) Application under S. 235, Companies Act, for componsation for misfeavence of directors—S 24, if applies (b) Omission of directors to come to any conclusion on important piece of business duly proposed for decision of Board—Whether traveless of the property of the company (c) Whether traveless of the property of the company Liquidator of — Suit by—In respect of inpaid calls — Limitation Suit for converting assets of company into cash and return of subscriptions—Limitation Suit for converting assets of company into cash and return of subscriptions—Limitation (c) Call un espect of share-holder is liability under special contract for emounts which are due and owing at the time of forfeiture of his shares—Limitation (d) Buit by liquidator against shore-holder for recovery of money due in respect of certain calls of shares not fully paid up—Limitation—Starting point Share holders—Company, if holds dividends declared on shares in trust for share-holders Suit against company which is being wound up —Date of institution of—What is Suit against company which is being wound up —Date of institution of—What is Suit against company which is being wound up —Date of institution of—What is Suit against company the shares—Limitation And damages, distinguished Awarded under Land Acquisition Act — Suit by mortgagor against usufructuary mortgagee For breach of contract (a) By principal against agent to recover moveable property received by agent and not accounted for where there is		der positive d						
(a) Application under S. 235, Companies Act, for componsation for misfersmore of directors—S 24; if applies (b) Omssion of directors to come to any conclusion on important pace of business duly proposed for decision of Board —Whether amounts to a continuing breach (c) Whether trustees of the property of the company S 10. Liquidator of — Suit by—In respect of inpaid calls — Limitation Suit for converting assets of company into cash and return of subscriptions—Limitation Suit for converting assets of company into cash and return of subscriptions—Limitation (c) Call 1u respect of share-holder's liability under special contract for emounts which are due and owing at the time of forfeiture of his shares—Limitation (d) Suit by liquidator against shero-holder for recovery of money due in respect of certain calls of shares not fully paid up—Limitation—Starting point Share-holders—Company if holds dividends declared on shares in trust for share-holders Suit against company which is being wound up — Date of institution of shares—Suit against company which is being wound up—Date of institution of the share shoulders Aud damages, distinguished Avanded under Land Acquistion Act — Suit by mortgager against unstructurary mortgage For breach of contract (u) By principal against agent to recover moveable property received by agent and not account—Limitation A 89 A 110 S 23 A 112 A 112 A 113 S 31 A 115 S 31 A 116 S 32 A 117 A 118 S 31 A 119 A 110 A 119 A 110 A 112 A 112 A 113 A 115 S 31 A 116 A 112 A 116 S 31 A 116 A 117 A 118 A 118 A 119 A 119 A 110 A 119 A 110 A 111 A 110 A 112 A 112 A 113 A 115 A 115 A 116 A 117 A 118 A 119 A 119 A 110 A 111 A 110 A 112 A 112 A 113 A 115 A 116 A 117 A 118 A 119 A 119 A 110 A 111 A 110 A 112 A 112 A 113 A 115 A 115 A 116 A 117 A 118 A 118 A 119 A 119 A 110 A 111 A 110 A 112 A 112 A 113 A 115 A 115 A 116 A 117 A 118 A 119 A 119 A 110 A 111 A 110	wrong	—His negliger	t failure to		nether a co		0.00	3 N 11
—Whether ramounts to a continuing breach S 23 (c) Whether trustees of the property of the company S 10 —Liquidator of — Suit by—In respect of initial on	(a) Appli for (b) Omis	misfeasince of sion of directo	directors—S	3 24, if ap to any co	plies nclusion of	impor	. S2	24 N 1
Suit for converting assets of company into cash and return of subscriptions—Limitation	(c) Whe	Vhether amour ther trustees o	its to a cont f the properi	inuing bready of the c	ompany		. S 23 . S 1	N 11 O N 9
Suit for converting assets of company into cash and return of subscriptions—Limitation assets of company for payment of his debts, where company is wound up—Suit for—Limitation (c) Call un respect of share-holder's liability under special contract for emounts which are due and owing at the time of forfeiture of his shares—Limitation (d) Suit by liquidator against shere-holder for recovery of money due in respect of certain calls of shares not fully paid up—Limitation—Starting point —Share holders—Company, if holds dividends declared on shares in trust for share-holders —Suit against company which is being wound up —Date of institution of—What is —Suit against company which is being wound up hy Court — Suit, when to be deemed to be instituted Compensation —And damages, distinguished —Awarded under Land Acquisition Act — Suit by mortgagor against usufructurary mortgagee —For breach of contract (a) By principal against agent to recover moveable property received by agent and not accounted for where there is express agreement to account—Limitation (b) By vendor against vendee for vendee's failure to pay vender's debt as contracted and for which purchase money has long the suit of the contract of the contract and for which purchase money has long the suit of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the cont		•		. ***	• •			N 30
assets of company for payment of his debts, where company is wound up—Sult for—Limitation A 112 (c) Call in respect of share-holder's liability under special contract for emounts which are due and owing at the time of forfeiture of his shares—Limitation Call of this shares—Limitation A 112 (d) But by liquidator against shero-holder for recovery of money due in respect of certain calls of shares not fully paid up—Limitatiou—Starting point A 115 (s) Share-holders—Company, if holds dividends declared on shares in trust for share-holders Sult against company which is being wound up — Date of institution of—What is Sult against company which is being wound up hy Court — Sult, when to be deemed to be instituted Sult when to be deemed to be instituted Sult when to be deemed to be instituted Sult yield against company which is being wound up hy Court — Sult, when to be deemed to be instituted Sult by mortgager against unstructurary mortgage A 116 Avarded under Land Acquistion Act — Suit by mortgager against unstructurary mortgage A 120 Avarded under Land Acquistion Act — Suit by mortgager against company against agent to recover moveable property received by agent and not accounted for where there is express agreement to account—Limitation A 89 A 65 A 65 A 65 A 65 A 65 A 65 A 65 A 6						11		N 13
c) Call 10 respect to share-holder's liability under special contract for emounts which are due and owing at the time of forfeiture of his shares—Limitation				nny into d	ash and r	eturn o	. A 6	2 N 7
c) Call 10 respect to share-holder's liability under special contract for emounts which are due and owing at the time of forfeiture of his shares—Limitation	_ " ' '	•				•		٠,
—For breach of contract (a) By principal against agent to recover moveable property received by agent and not accounted for where there is express agreement to account—Limitation A 89 (b) By rendor against vandee for vendee's failure to pay vendors debt as contracted and for which purchase money has A 63 A 65 A 65 A 65	pat (c) Call trac forf (d) Suit mot mot mot mot mot mot mot suit again tlon of Suit again when to Compensation Awarded tr	y is wound up un respect of a to remounts eiture of his al by liquidatoney due in rest up—Limitati ers.—Company share-holders at company why when the company who deemed to be ges, distinguish nder Land Ace	Suit for— chare-lodder' which are a hares—Limit r against sl pect of cert iou—Starting r, if holds du ich is being the interpretation in it is being to instituted ed quistion Act	Limitations sliability lue and ov tation ero-holder ain calls of point rideuds de wound up wound up Suit by	under specing at the for recof shares reclared on s	eial con- time of vory of not fully chares in institu-	A 11: A 11: A 11: S 10 S 3 S: A 11:	2 N 2 5 N 3 N 11 N 13 3 N 4
A 83 A 65 A 65 A 65 A 65	For breach (a) By rec exp (b) By	of contract principal again lived by agen ress agreement vendor against	st agent to t and not a t to account- vendee for	recover : cconnted ! Limitatio vendeo's f	for where n ailure to p	there is	A 89	9 N 3
						· ·	A 65 A 65 A 65	5 N 1 5 N 4
(h) For breach of promise to do anything at specified time — Limitation—Illustrative cases governed by Art. 65 A 65	(g) Cont (h) For	ract to deliver breach of pro	nise to do a	nything at			A 51	N 1

Compensation—For breach of contract—(Contd.)	
(i) For inducing breach—Limitation	A 21
 (i) In respect of contract performable on demand—Limitation— 	
	N 2; A 65 N
(k) Suit for — Whether one for specific performance of con-	
tract	A 113 N
- For breach of covenant for title or for quiet enjoyment contained	
in deed of transfer	A 62 N
For breach of implied contract-Suits for-What are-Illustrative	
cases	A 115 N
-For breach of promise	
(a) Art, 115 and Art, 65 distinguished	A 65 N I
(b) Execution application under Civil P. C., O. 21 R. 43, to	
enforce surety bond-Limitation	A 65 N I
(c) Limitation-Illustrative cases governed by Art. 65	A 65 N
(d) Suit for-Limitation	A 65
Fc	
	A 116 N 1
· years after	
the expiry of the term fixed for payment in a mortgage	
deed which contains no stipulation for payment of post	
diem interest	A 116 N 25
(e) Claim for personal decree in suit to enforce vendor's lien for	A 116 N 23
inpaid purchase money	A III
(d) Claim for personal decree under O. 34. R. 6, Civil P. C.— Limitation A 116 N 18	a 116 N 20
Limitation A 116 N 13	8; A 116 N 1
(c) Limitation A 65 N (f) Registered document of redemption — Clause in document	0, 11
whereby executant undertakes to put opposite party in pos-	
session—Default of such clause — Suit for refund of money	
paid under such registered document of redemption	A 116 N 21
(g) "Registered"—Meaning of	A 116 N 5
(h) Special Art. 116, whether prevails over any other Article	A 116 N 1
under which suit may fall	A 110 11 -
(i) Suit based upon award, where agreement to rofer to arbitra-	A 116 N 14
tion has been registered and award is signed by parties	
(1) Suit based upon breach of covenants in registered sale deeds	A 116 N 15
-Limitation-Starting point	
(k) Suit by lessee for compensation for breach of express or im- plied torm in lease deed to put lessee in possession of pro-	
perties leased	A 116 N 10
(I) Suit by mortgagor against mortgagee for compensation for	
failure to pay prior mortgageo as undertaken in mortgage	A 116 N 22
deed_Limitation_Starting point	Allone
(m) Suit by mortgagor against usufructuary mortgages for com-	
pensation for sale of portion of mortgaged properties for	
arrears of revenue as a result of default of mortgageo who	
was bound, under mortgage deed to pay Government revenue—Limitation—Starting point	A 116 N 23
(n) Suit by mortgagor against usufructuary mortgages for	A 116 N 22
recovery of mortgage money	A 110 M
(c) Suit by usufructuary mortgages for mesne profits during	A'116 N 23
neriod he was bent out of mesession	A 110 11 2

		2701
Comp	ensation—For breach of registered contract—(Contd.)	
	(p) Suit by usufructuary mortgagee for refund of money ad.	
	vanced on mortgage nn ground that preperty was already	
	mortgaged with possession	A 116 N 22
	(q) Suit by vendee for breach of covenant to put him in posses.	
	sion—Limitation (r) Suit by vendee for breach of express or implied covenant of	A 116 N 16
	title in sale deed	A 116 N 15
	(s) Suit by vendor for pershkush paid by him after execution of	A 110 N 15
	sale deed under which vendee is bound to pay the same	A 116 N 15
	(t) Suit by vendor against vendee for compensation for vendee's	
	failure to pay vendor's debts as undertaken in sale deed-	
	Limitation—Starting point	A 116 N 15
	(u) Suit for account based upon registered contract of agency	A 116 N 12
	(v) Suit for accounts by principal against agent — Suit arising	1 110 27 1
	on registered contract of agoncy (w) Suit for accounts by principal against agent on registered	A 116 N 1
	agreement to account—Limitation	A 89 N 4
	(x) Suit for accounts of partnership where deed of partnership	77 OD 11 Z
	is registered	A 116 N 11
	(y) Suit for mortgage money by usufructuary mortgagee on	
	breach of covenant in mortgage deed for delivery of posses-	
	sion—Limitation	A 116 N 22
	(2) Suit for mortgage money by usniructuary mortgages on ground that he was subsequently dispossessed by third	
	person by virtue of superior title created by mortgagor.	
	Limitation	A 116 N 22
	(z1) Suit for possession of immovable property founded on breach	
	of contract in writing registered	A 116 N 1
	(z ⁴) Suit for profits on registered agreement ,	A 116 N 6
	(z3) Suit for nurchaso money by vendor, who had previously	
	refused it before sub-registrar before whom it was tendered	4 110 17 1
	by vendee in accordance with covenant in sale deed, (24) Suit for recovery of arrears of allowance payable annually	A 116 N 1
	under registered ekrarnama	A 116 N 24
	(25) Suit for recovery of dower under registered deed-Limita.	
	tion-Starting point-Where suit is by heirs of wife	A 116 N 13
	(z ⁶) Suit for recovery of money on simple bond registered	A 116 N 7
	(z') Suit for recovery of royalty nuder registered deed-Limita.	A 110 N 0
	(z ⁵) Suit for refund of mortgage money by mortgages on ground	A 116 N 9
	that he has been defrauded by defendant and made to	
	enter into mortgage transaction	A 116 N 1
	(z9) Suit for rent against tenant holding over after expiry of	
	registered lease decd, for period of holding over	A 116 N 8
	(z10) Suit for share of profits in lands collected by defendant and to which plaintiff is entitled by virtue of registered	
	agreement	A 116 N 8
	(z11) Suit for simple money decree nn covenant to pay contained	11 110 11 0
	in mortgage deed executed by manager or father of joint	
	Hindu family where mortgago is not hinding on interest of	
	sons or junior members—Limitatinn	A 116 N 19
	(z ¹²) Suit founded on breach of statutory abligation (z ¹³) Suit founded upon tort	A 116 N 1 A 116 N 1
•	(z'') Suit founded upon tort	
		Lim. 172

A 116 N

A 116 N

A 116 N

A 116 N 2

Compensation-For breach of registered contract-(Contd.) (z14) Suit on contract, part of which nnly is in writing and regis-

sation for breach of registered contract (z16) Suit to onforce charge against property by sale thereof, such rollef being founded upon breach of contract in writing

registered ...

(z15) Suit on contract signed by nno party only - Limitation applicable, whether same as applicable to suit for compen-

(z17) Suit to enforce mortgage executed to secure lean in kind	A 116 N 2
(z19) Suit to enforce personal relief in mortgage deed not validly	A 116 N 21
registered (z19) Suit to enforce personal remody arising under registered	21 110 1.
mortgage deed	A 116 N 19
(z ²¹) Suit to recover Government and under proprietary rest	
payable by transferce under registered maintenance deed to	
transferor	A 116 N 24
(z21) Suit upon covenant of indemnity contained in registered	
deed of exchange	A 116 N 18
(z22) Suit, whether lies by third party to contract	A 116 N 2
(z23) Vondor and vendee — Vendee undertaking to pay mortgage	
debt of vendor-Stipulation to roturn to vendor surplus	
after payment to mortgagee-Suit by vendor for such	
surplus—Limitation	A 116 N 15
(z21) Whether restricted to claim for unliquidated damages or	A 116 N 6
nocludes also elaim for sum certain, in Art. 116	A 110 H 0
For breach of unregistered contract	
(a) Amount of damages payable by parties fixed even in ad-	A 115 N 16
vance before date fixed for performance	A 115 N 1
(b) Applicability of Art. 115—Essentials of	A 115 N 1
(c) Art. 116 and Art. 115, difference between	A IIV
(d) Benamidar-Agreement to collect money for plaintiff-Suit	
on such agreement, whether based on contract within	A 115 N 1
(e) Breach of contract, continuing one	A 115 N 10
(c) Dieter of construct continuing one	A 115 N 15
(f) Cases governed by Art. 115—Hillustrative cases (g) Contract to be performed at future date and no time fixed	
for performance either expressly or by necessary implica-	7 16
tion	A 115 N 16
(h) Date fixed for performance of contract	A 115 N 16
(i) Date for performance not fixed oithor expressly or by neces-	
sary implication, but intention of parties that there should	A 115 N 16
(1) "Date of breach of contract"—Breach of contract, when	A 115 N 16
(k) Limitation—Starting point A 115;	A 115 N 16
	A 115 N 1
, N 16;	A 115 N 18
paid	
n for	A 115 N 14
(p) Suit against del credere agent for recovery of price of goods	A 115 N 10
sold by him and not paid by purchasers	

Compensation—For breach of unregistered contract—(Contd.)	
(q) Suit based on award signed by parties making the reference:	
(r) Suit based on compromise decree, whether one for breach of	
contract between parties or for breach of terms imposed by	
decree of Court	A 115 N 12
(s) Suit based on tort	
(t) Suit by co-sharer against other co-sharer for profits	
(u) Suit by judgment-debtor for compensation against decree-	
bolder for failure to certify payment made out of Court-	
Limitation—Starting point	A 115 N 6
(v) Suit for accounts on agreement still good and subsisting	A 115 N 1
(w) Suit for claim by share-holder for his dividend	A 115 N 1
() O () 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	A 115 N 13
(y) Suit for commission by broker —Addition of prayer for	W 110 W 19
account, whether alters its character as snit for compensa-	
	A 117 M
(z) Suit for commission by broker—Whether one for compensa-	A 115 N 9
tion for breach of contract	A 115 N 9
(z¹) Suit for compensation for wrongful dismissal from Govern-	W IIO M O
	1 11 5 3 5
ment or municipal service—Limitation—Starting point	A 115 N 7
(z²) Suit for recovery of malikana where plaintiff does not seek	
to enforce charge on land—Limitation applicable, whether	
same as applicable to suit for compensation for breach of	
(23) Suits for recovery of sum certain governed by Art. 115—	A 115 N 5
(z) buits for recovery of sum certain governed by Art. 110-	
Illustrations	A 115 N 3
(z') Suit on contract that is partly in writing which is regis-	
	A 115 N 2
	A 115 N 1
rs actual	
loss on account of breach of contract	A 116 N 16
(z') Time, whether runs from plaintiff's knowledge of the breach	1 110 17 10
of contract	A 116 N 16
	A 132 N 11
For diverting water course Limitation	A 38
-For doing or omitting to do act in pursuance of enactment-	
See under Act	
— For false imprisonment—Suit for—Limitation	A 19
-For inducing breach of contract	A 27
For infringement of copyright	10 4 10 37 -
	40. A 40 N 5
(b) Suit for account of profits made by defendant by infringing	1 10 37 4
copyright—Limitation (c) Suit for injunction restraining defendant from making in.	A 40 N 1
f-1	1 40 37 4
fringement (d) Suit for injunction restraining defendant from making in.	A 40 N 1
fringement—Suit, whether one for compensation for infringe.	
ment within Art. 40	A 40 N 1
——Fc	A 40 N I
P. C. and	
necessary	
for ·	A 42 N 2
	42; A 42 N 4
(c) Suit, when maintainable	A 42 N 2
\-,, ·····	

A 42 N

A 42 N

A 22 N

A 22 N A 2

•••

Compensation—For injunction wrongfully obtained—(Contd.)

(d) Suit, whether barred by pmission to proceed under Civil P.C..

(e) What constitutes "wrongfully ubtaining" injunction

(a) Case falling both under Art. 22 and general Art. 36-Limita-

(b) Limitation—Applicability of Art. 22 and Workmen's Com-

Sec. 95 ...

pensation Act. S. 19 ...

(c) Limitation-Residuary provision

For injury to person

(f) Sut by plaintiff against defendant for enticing away former's wife—Limitation	(d) Limitation—Starting point	A 23 N
(f) Suit by plaintiff against defendant for enticing away former's wife—Limitation A suife—Limitation A 18—For injury to property—What is, within Art. 49 A 19—For interest claimed as compensation—Limitation A 18—For interest claimed as compensation—Limitation A 18—For index experience (a) Amount of compensation not dotermined—Limitation A 19—Limitation	(e) Proceeding under Workmen's Compensation Act-Limita-	
wife—Limitation For interest claimed as compensation—Limitation For land acquired by Government (a) Amount of compensation not dotermined—Limitation (b) Execution proceedings to enforce award by Court—Limitation (c) Remedy of person who accepts award of Collector in order to conforce it (d) Suit against third person who has received compensation money from Government which plaintiff claims—Limitation For land acquired for public purposes—Limitation For land acquired for public purposes—Limitation For loss caused by defendant's obstructing plaintiff's right of fishery For loss or injury to goods—Suit against carrier See under Carrier For loss resulting from misconduct of agent For loss resulting from want of skill of agent For loss resulting from want of skill of agent For malleasance (a) Application under Indian Companies Act, S. 244—Limitation (b) Suit against trustes—Limitation (c) Suit against trustes—Limitation (d) Suit for—Limitation (d) Suit for—Limitation (d) Suit for—Simitation Act (e) Suit in respect of malfeasance independent of contract— Limitation (f) Suit in respect of malfeasance not independent of contract— Illustrative cases (g) Suit in respect of wongs independent of contract—Illustrat. (g) Suit in respect of wongs independent of contract—Illustrat.	tion	A 22 N
For injury to property—What is, within Art. 49 For interest claimed as compensation—Limitation A 13 For land acquired by Government (a) Amount of compensation not dotermined—Limitation (b) Execution proceedings to enforce award by Court—Limitation (c) Romedy of person who accepts award of Collector in order to onforce it (d) Suit against third person who has received compensation money from Government which plaintiff claims—Limitation For land acquired for public purposes—Limitation For libel Set under Libel—Compensation for For loss caused by defendant's obstructing plaintiff's right of fishery For loss or injury to goods—Suit against carrier Set under Carrier For loss resulting from misconduct of agent For loss resulting from neglect of agent For loss resulting from hopeted of agent For loss resulting from want of skill of agent For malessance (a) Application under Indian Companies Act, S. 244—Limitation (b) Suit against trustoe—Limitation (c) Suit sgainst trustoe—Limitation (d) Suit for—Limitation (d) Suit for—Limitation (e) Suit in respect of malfessance independent of contract—Limitation (f) Starting point, whether modified in cases governed by S. 24, Lamitation Act (e) Suit in respect of malfessance independent of contract—Illustrative cases (g) Suit in respect of wongs independent of contract—Illustrative cases (g) Suit in respect of wongs independent of contract—Illustration (g) Suit in respect of wongs independent of contract—Illustration (g) Suit in respect of wongs independent of contract—Illustration (h) Suit in respect of wongs independent of contract—Illustration (g) Suit in respect of wongs independent of contract—Illustration (g) Suit in respect of wongs independent of contract—Illustration (g) Suit in respect of wongs independent of contract—Illustration (g) Suit in respect of wongs independent of contract—Illustration	(f) Suit by plaintiff against defendant for enticing away former's	
For injury to property—What is, within Art. 49		A 22 N
For interest claimed as compensation—Limitation A 18 For land acquired by Government (a) Amount of compensation not dotermined—Limitation A 18 (b) Execution proceedings to enforce award by Court—Limitation A 19 (c) Remedy of person who accepts award and Collector in order to conforce it A 19 (d) Suit against third person who has received compensation money from Government which plaintiff claims—Limitation A 17; A 19 For land acquired for public purposes—Limitation A 17; A 19 For land acquired for public purposes—Limitation A 17; A 19 For loss caused by defendant's obstructing plaintiff's right of fishery For loss resulting from miscondact of agent A 19 For loss resulting from miscondact of agent A 19 For loss resulting from meglect of agent A 19 For loss resulting from meglect of agent A 19 For loss resulting from most of skill of agent A 19 For loss resulting from most of skill of agent A 19 For loss resulting from most of skill of agent A 19 For loss resulting from most of skill of agent A 19 For loss resulting from most of skill of agent A 19 For loss resulting from most of skill of agent A 19 For malfeasance (a) Application under Indian Companies Act, S. 344—Limitation A 19 (c) Sut against transce—Limitation A 19 (d) Starting point in case of recurring cause of action A 19 (d) Starting point, whether modified in cases governed by S. 24, Lumitation Act A 19 (e) Suit in respect of malfeasance independent of contract—Illustrative cases A 19 Suit in respect of malfeasance not independent of contract—Illustrative cases A 19 Suit in respect of malfeasance not independent of contract—Illustrative cases A 19 Suit in respect of malfeasance not independent of contract—Illustrative cases A 19 Suit in respect of malfeasance model independent of contract—Illustrative cases A 19 Suit in respect of malfeasance model independent of contract—Illustrative cases A 19 Suit in respect of ma	For inverse to property. What is within Art. 49	A 49 N
For land acquired by Government (a) Amount of compensation not dotermined—Limitation (b) Execution proceedings to enforce award by Court—Limitation (c) Remedy of person who accepts award at Collector in order to onforce it (d) Suit against third person who has received compensation money from Government which plaintiff claims—Limitation —For land acquired for public purposes—Limitation —For libel See under Libel—Compensation for —For loss caused by defendant's obstructing plaintiff's right of fishery —For loss resulting from miscondact of agent —For loss resulting from miscondact of agent —For loss resulting from want of skill agent —For loss resulting from want of skill agent —For malfeasance (a) Application under Indian Companies Act, S. 244—Limitation (b) Suit sgainst trustee—Limitation (c) Suit sgainst trustee—Limitation (d) Suit for—Limitation (d) Starting point in case of recurring cause of action: (ii) Starting point in case of recurring cause of action: (iii) Starting point in case of recurring cause of action: (iii) Starting point in case of recurring cause of action: (iii) Starting point in case of recurring cause of action: (iii) Starting point in case of recurring cause of action: (iii) Starting point in case of recurring cause of action: (iii) Starting point in case of recurring cause of action: (iii) Starting point in case of recurring cause of action: (iii) Starting point in case of recurring cause of action: (iii) Starting point in case of recurring cause of action: (iii) Starting point whether modified in cases governed by S. 24. Lamitation Act (e) Suit in respect of malfeasance independent of contract—Illustrative cases (g) Suit in respect of wongs independent of contract—Illustration.		A 132 N
(a) Amount of compensation not dotermined—Limitation A. I. (b) Execution proceedings to enforce award by Court—Limitation A. I. (c) Romedy of person who accepts award at Collector in order to conforce it		
(b) Execution proceedings to enforce award by Court—Limitation		A 17 N
(b) Execution proceedings to enforce award by Court—Limitation (c) Remedy of person who accepts award at Collector in order to conforce it (d) Surt against third person who has received compensation money from Government which plaintiff claims—Limitation — For land acquired for public purposes—Limitation A 17; A 10. — For land acquired for public purposes—Limitation A 17; A 10. — For loss or injury to goods—Suit against carrier — For loss or injury to goods—Suit against carrier — For loss or injury to goods—Suit against carrier — For loss resulting from miscondanct of agent A 10. — For loss resulting from neglect of agent A 10. — For loss resulting from meglect of agent A 10. — For loss resulting from most of skill of agent A 10. — For malfeasance (a) Application of general Art. 36 to cases falling under other specific Articles (b) Application under Indian Companies Act, S. 244—Limitation (c) Suit against transco—Limitation A 10. (d) Starting point in case of recurring cause of action: (ii) Starting point, whether modified in cases governed by S. 24, Limitation A 10. (Suit in respect of malfeasance independent of contract—Illustrative cases (g) Suit in respect of malfeasance not independent of contract—Illustrative cases (g) Suit in respect of malfeasance independent of contract—Illustrative cases (g) Suit in respect of wrongs independent of contract—Illustrative cases (g) Suit in respect of malfeasance independent of contract—Illustrative cases	(a) Amount of compensation not doternithed—Dimination	A 120 N
ton (c) Romedy of person who accepts award at Collector in order to onforce it (d) Sut against third person who has received compensation money from Governmont which plaintiff claims—Limitation —For land acquired for public purposes—Limitation A 17; A 16. —For libel —For loss caused by defendant's obstructing plaintiff's right of fishery —For loss or injury to goods—Suit against carrier —For loss resulting from misconduct of agent A 10. —For loss resulting from misconduct of agent A 10. —For loss resulting from the fishery A 10. —For loss resulting from want of skill of agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting from want of skill agent A 10. —For loss resulting point in case of recurring cause of action A 10. —For loss resulting point in case of recurring cause of action A 10. —For loss resulting point want of the point want of the 10. —For loss resulting point want of the 10. —For loss resulting point want of the 10. —For loss resulting point want of the 10. —For loss resulting point want of the 10. —For loss resulting point want of the	(b) Francisco arrandina to suface a red by Court Timite	
(c) Remedy of person who accepts award of Collector in order to oncree it (d) Surt against third person who has received compensation money from Government which plaintiff claims—Limitation —For land acquired for public purposes—Limitation A 17; A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17. A 17.		A 17 N
onlores it (d) Sutt against third person who has received compensation money from Government which plaintiff claims—Limita- tion For land acquired for public purposes—Limitation A 17; A For libel See under Libel—Compensation for For loss caused by defendant's obstructing plaintiff's right of fishery For loss or injury to goods—Suit against carrier See under Carrier For loss resulting from miscondact of agent A For loss resulting from mosted to fagent A For loss resulting from defendant's obstructing plaintiff's right of fishery For loss resulting from miscondact of agent A For loss resulting from most of skill if agent A For loss resulting from most of skill if agent A For malfeasance (a) Applicability of general Art. 36 to cases falling under other specific Articles (b) Application under Indian Companies Act, S. 244—Limita- tion A (c) Suit for—Limitation (d) Sut for—Limitation (d) Starting point in case of recurring cause of action: (ii) Starting point in case of recurring cause of action: (iii) Starting point, whether modified in cases governed by S. 24, Lamitation At (e) Suit in respect of malfeasance independent of contract— Limitation (f) Suit in respect of wrongs independent of contract—Hustra- Respect of wrongs independent of contract—Hustra- (g) Suit in respect of wrongs independent of contract—Hustra-		
(d) Suit against third person who has received compensation money from Government which plaintiff claims—Limitation For land acquired for public purposes—Limitation A 17; A For libel See under Libel—Compensation for For loss caused by defendant's obstructing plaintiff's right of fishery For loss or injury to goods—Suit against carrier See under Carrier For loss resulting from misconduct of agent For loss resulting from melect of agent A 10 For loss resulting from want of skill of agent A 10 For loss resulting from want of skill of agent A 10 For loss resulting from want of skill of agent A 10 For loss resulting from want of skill of agent A 10 For mallessance (a) Application of general Art. 36 to cases falling under other specific Articles (b) Application under Indian Companies Act, S. 344—Limitation (c) Suit sgainst trustoe—Limitation A 10 For land the strain of the strain ground in case of recurring cause of action: (ii) Starting point in case of recurring cause of action: (iii) Starting point in case of recurring cause of action: (iii) Starting point in case of recurring cause of action: (iii) Starting point in case of recurring cause of action: (iii) Starting point in case of recurring cause of action: (b) Suit in respect of mallessance independent of contract—Illustrative cases (g) Suit in respect of wongs independent of contract—Illustration (20 Suit in respect of wongs independent of contract—Illustration (20 Suit in respect of wongs independent of contract—Illustration (20 Suit in respect of wongs independent of contract—Illustration (20 Suit in respect of wongs independent of contract—Illustration (20 Suit in respect of wongs independent of contract—Illustration (20 Suit in respect of wongs independent of contract—Illustration (20 Suit in respect of wongs independent of contract—Illustration (20 Suit in respect of wongs independent of contract—Illustration (20 Suit in respect of wongs independent of contract—Illustration (20 Suit in respect of wongs independ		A 17 N
money from Governmont which plaintiff claims—Limitation For land acquired for public purposes—Limitation A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17; A 17		21.0
tion For land acquired for public purposes—Limitation A 17; A For libel See under Libel—Compensation for For loss caused by defendant's obstructing plaintiff's right of fishery For loss or injury to goods—Suit against carrier See under Carrier For loss resulting from misconduct of agent A 10 For loss resulting from misconduct of agent A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A A	(d) Buit against third person who has received compensation	
For land acquired for public purposes—Limitation A 17; A For libel See under Libel—Compensation for For loss caused by defendant's obstructing plaintiff's right of fishery For loss or injury to goods—Suit against carrier See under Carrier For loss resulting from miscondant of agent A For loss resulting from mosted to fisher A For loss resulting from most of skill a fight A For loss resulting from and of skill a fight A For malfeasance (a) Applicability of general Art. 36 to cases falling under other specific Articles (b) Application under Indian Companies Act, S. 244—Limitation (c) Suit for—Limitation (d) Sut for—Limitation (d) Sut for—Limitation (ii) Starting point in case of recurring cause of action: (iii) Starting point, whether modified in cases governed by S. 24, Lamitation A (e) Suit in respect of malfeasance independent of contract—Limitation (f) Suit in respect of malfeasance not independent of contract—Illustrative cases (g) Suit in respect of vongs independent of contract—Illustrative cases (g) Suit in respect of wongs independent of contract—Illustrative		A 17 N
For libel See under Libel—Compensation for For loss caused by defendant's obstructing plaintiff's right of fishery For loss or injury to goods—Suit against carrier See under Carrier For loss resulting from misconduct of agent For loss resulting from misconduct of agent For loss resulting from want of skill of agent For malleasance (a) Applicatibity of general Art. 36 to cases falling under other specific Articles (b) Application under Indian Companies Act, S. 344—Limitation (c) Suit against trustes—Limitation (d) Suit for—Limitation (d) Suit for—Limitation (i) Starting point in case of recurring cause of action: (ii) Starting point, whether modified in cases governed by S. 24, Limitation Act (e) Suit in respect of malleasance independent of contract— Limitation (f) Suit in respect of malleasance not independent of contract— Illustrative cases (g) Suit in respect of wongs independent of contract—Illustrative cases (g) Suit in respect of wongs independent of contract—Illustrative cases (g) Suit in respect of wongs independent of contract—Illustrative	tion	A 17 N
See under Libel—Compensation for For loss caused by defendant's obstructing plaintiff's right of fishery For loss or injury to goods—Suit against carrior See under Carrier For loss resulting from miscondanct of agent For loss resulting from neglect of agent For loss resulting from neglect of agent For loss resulting from want of skill of agent For malfeasance (a) Application of general Art. 36 to cases falling under other specific Articles (b) Application under Indian Companies Act, S. 344—Limitation (c) Suit against trastoc—Limitation (d) Suit for—Limitation (i) Starting point (ii) Starting point, whether modified in cases governed by S. 24, Limitation Act (e) Suit in respect of malfeasance independent of contract— Limitation (f) Suit in respect of malfeasance independent of contract— Illustrative cases (g) Suit in respect of malfeasance independent of contract— Illustrative cases (g) Suit in respect of wongs independent of contract—Illustra-		Y TI
— For loss caused by defendant's obstructing plaintiff's right of fishery — For loss or injury to goods—Suit against carrior See under Carrier — For loss resulting from misconduct of agent — For loss resulting from misconduct of agent — For loss resulting from my for sight of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the seed of the		
fishery For loss or injury to goods—Suit against carrier Sex under Carrier For loss resulting from misconduct of agent For loss resulting from meglect of agent For loss resulting from want of skill of agent For mallessance (a) Application under Indian Companies Act, S. 244—Limitation (b) Application under Indian Companies Act, S. 244—Limitation (c) Suit syainst trustoe—Limitation (d) Suit for—Limitation (i) Starting point (ii) Starting point in case of recurring cause of action: (iii) Starting point, whether modified in cases governed by S. 24, Lamitation Act (e) Suit in respect of mallessance independent of contract— Ilmitation (f) Suit in respect of mallessance not independent of contract— Ilmitstrative cases (g) Suit in respect of mallessance not independent of contract— Ilmitstrative cases (g) Suit in respect of wongs independent of contract—Illustrative cases (g) Suit in respect of wongs independent of contract—Illustrative cases (g) Suit in respect of wongs independent of contract—Illustrative cases (g) Suit in respect of wongs independent of contract—Illustrative cases		
For loss or injury to goods—Suit against carrier See under Carrier For loss resulting from misconduct of agent For loss resulting from misconduct of agent For loss resulting from mand of skill in agent For malfeasance (a) Applicability of general Art. 36 to cases falling under other specific Articles (b) Applicability of general Art. 36 to cases falling under other specific Articles (c) Suit sqainst trustoc—Limitation (d) Suit for—Limitation (d) Suit for—Limitation (d) Starting point in case of recurring cause of action: (ii) Starting point, whether modified in cases governed by S. 24, Limitation At (e) Suit in respect of malfeasance independent of contract—Limitation (f) Suit in respect of malfeasance not independent of contract—Illustrative cases (g) Suit in respect of vongs independent of contract—Illustration	For loss caused by defendant's obstructing plaintiff's right of	NT 1
See under Carrier For loss resulting from misconduct of agent For loss resulting from moglect of agent For loss resulting from want of skill if agent For loss resulting from want of skill if agent For malfeasance (a) Application to describe the specific Articles (b) Application under Indian Companies Act, S. 244—Limitation (c) Suit sgainst trustee—Limitation (d) Suit for—Limitation (d) Suit for—Limitation (ii) Starting point in case of recurring cause of action: (iii) Starting point, whether modified in cases governed by S. 24. Lamitation Act (e) Suit in respect of malfeasance independent of contract— Limitation (f) Suit in respect of malfeasance not independent of contract— Illustrative cases (g) Suit in respect of wongs independent of contract—Illustrative cases (g) Suit in respect of wongs independent of contract—Illustrative cases	fishery	V 103 H
See under Carrier For loss resulting from misconduct of agent For loss resulting from moglect of agent For loss resulting from want of skill if agent For loss resulting from want of skill if agent For malfeasance (a) Application to describe the specific Articles (b) Application under Indian Companies Act, S. 244—Limitation (c) Suit sgainst trustee—Limitation (d) Suit for—Limitation (d) Suit for—Limitation (ii) Starting point in case of recurring cause of action: (iii) Starting point, whether modified in cases governed by S. 24. Lamitation Act (e) Suit in respect of malfeasance independent of contract— Limitation (f) Suit in respect of malfeasance not independent of contract— Illustrative cases (g) Suit in respect of wongs independent of contract—Illustrative cases (g) Suit in respect of wongs independent of contract—Illustrative cases	-For loss or injury to goods-Suit against carrier	
For loss resulting from neglect of agent		. 00 N
——For loss resulting from neglect of agent ——For loss resulting from want of skill of agent ——For malfesance (a) Applicatility of general Art. 36 to cases falling under other specific Articles (b) Application under Indian Companies Act, S. 244—Limitation (c) Suit sgainst trustee—Limitation (d) Suit for—Limitation (i) Starting point in case of recurring cause of action: (ii) Starting point, whether modified in cases governed by S. 24, Lunitation Act (e) Suit in respect of malfesance independent of contract—Illustrative cases (f) Suit in respect of malfesance not independent of contract—Illustrative cases (g) Suit in respect of vongs independent of contract—Illustrative cases (g) Suit in respect of vongs independent of contract—Illustrative cases	For loss resulting from misconduct of agent	A 90 N
— For loss resulting from want of skill of agent A For malfeasance (a) Applicability of general Art. 36 to cases falling under other specific Articles A Application under Indian Companies Act, S. 244—Limitation A Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application Application .		A 90 N
— For malfeasance (a) Applicability of general Art. 36 to cases falling under other specific Articles (b) Application and Companies Act, S. 244—Limitation (c) Suit sqainst trustee—Limitation (d) Suit for—Limitation (i) Starting point in case of recurring cause of action: (ii) Starting point, whether modified in cases governed by S. 24, Lamitation Act (e) Suit in respect of malfeasance independent of contract—Limitation (f) Suit in respect of malfeasance not independent of contract—Illustrative cases (g) Suit in respect of vongs independent of contract—Illustrative cases (g) Suit in respect of vongs independent of contract—Illustrative cases		A 90 N
(a) Applicability of general Art. 36 to cases falling under other specific Articles (b) Application under Indian Companies Act, S. 344—Limitation (c) Suit squinst trustee—Limitation (d) Suit for—Limitation (i) Starting point (ii) Starting point (iii) Starting point (iii) Starting point, whether modified in cases governed by S. 44. Limitation Act (e) Suit in respect of malfeasance independent of contract—Limitation (f) Suit in respect of malfeasance not independent of contract—Illustrative cases (g) Suit in respect of wrongs independent of contract—Illustrative cases (g) Suit in respect of wrongs independent of contract—Illustrative	—For malfeasance	
specific Articles (b) Application under Indian Companies Act, S. 244—Limitation (c) Suit sgainst trustoe—Limitation (d) Suit for—Limitation (i) Starting point in case of recurring cause of action: (ii) Starting point, whether modified in cases governed by S. 24, Limitation Act (e) Suit in respect of malfeasance independent of contract—Limitation (f) Suit in respect of unalfeasance not independent of contract—Illustrative cases (g) Suit in respect of wrongs independent of contract—Illustrative cases		4 37
(b) Application under Indian Companies Act, S. 244—Limitation (c) Suit against trustee—Limitation (d) Suit for—Limitation (i) Starting point (ii) Starting point in case of recurring cause of action: (iii) Starting point, whether modified in cases governed by S. 24, Limitation Act (e) Suit in respect of malfeasance independent of contract Limitation (f) Suit in respect of malfeasance not independent of contract Illustrative cases (g) Suit in respect of wrongs independent of contract—Illustrative	specific Articles	A 36 N
tion (c) Suit sqainst trustee—Limitation (d) Suit for—Limitation (i) Starting point (ii) Starting point in case of recurring cause of action: (iii) Starting point, whether modified in cases governed by S. 24, Limitation Act (e) Suit in respect of malfeasance independent of contract Limitation (f) Suit in respect of malfeasance not independent of contract Illustrative cases (g) Suit in respect of wrongs independent of contract—Illustrative	(b) Application under Indian Companies Act. S. 244-Limita-	
(c) Suit against trustoe—Limitation (d) Suit for—Limitation (i) Starting point (ii) Starting point in case of recurring cause of action: (iii) Starting point, whether modified in cases governed by S. 24, Limitation Act Limitation (f) Suit in respect of malfeasance independent of contract Limitation (f) Suit in respect of malfeasance not independent of contract Illustrative cases (g) Suit in respect of wrongs independent of contract—Illustrative cases	tion	A 36 N
(d) Suit for—Limitation (i) Starting point (ii) Starting point in case of recurring cause of action: (iii) Starting point, whether modified in cases governed by S. 24. Limitation At (e) Suit in respect of malfeasance independent of contract Limitation (f) Suit in respect of malfeasance not independent of contract Illustrative cases (g) Suit in respect of wrongs independent of contract—Illustrative cases		A 36 N
(i) Starting point (ii) Starting point in case of recurring cause of action: (iii) Starting point, whether modified in cases governed by S. 24. Lamitation Act (e) Suit in respect of malfeasance independent of contract— Limitation (f) Suit in respect of malfeasance not independent of contract— Illustrative cases (g) Suit in respect of wongs independent of contract—Hustra- A. 3.		0 37
(ii) Starting point in case of recurring cause of action: (iii) Starting point, whether modified in cases governed by S. 24, Limitation Act (e) Suit in respect of malfeasance independent of contract Limitation (f) Suit in respect of malfeasance not independent of contract Illustrative cases (g) Suit in respect of wrongs independent of contract—Illustra		A 36 N
(iii) Starting point, whether modified in cases governed by S. 24. Limitation Act (e) Suit in respect of malfeasance independent of contract Limitation A 36; A (f) Suit in respect of malfeasance not independent of contract Illustrative cases (g) Suit in respect of wrongs independent of contract A 36	(ii) Starting point in each of requiring cause of action :	A 36 N
S. 24. Limitation Act (e) Suit in respect of malfeasance independent of contract— Limitation (f) Suit in respect of malfeasance not independent of contract— Illustrative cases (g) Suit in respect of wrongs independent of contract—Illustra	(iii) Starting point whether modified in cases governed by	
(e) Suit in respect of malfeasance independent of contract— Limitation	S 94 Limitation Act	A 36 N
Limitation (f) Suit in respect of malleasance not independent of contract— Illustrative cases (g) Suit in respect of wrongs independent of contract—Illustra A 3		37
(f) Suit in respect of malleasance not independent of contract— Illustrative cases (g) Suit in respect of wrongs independent of contract—Illustra A S		; A 36 N
Illustrative cases (g) Suit in respect of wrongs independent of contract—Illustra	(f) Suit in respect of multipressure not independent of contract-	
(g) Suit in respect of wrongs independent of contract—Illustra-	Thusbacting onese	A 36 N
	(a) Suit in respect of surenes independent of contract—Illustra-	N
DITO CASCA WILLIAM ARE. OU		A 36 N
	WIYO CASCA WIGHTH ZITE. OU	

GENERAL INDEX	2741
Compensation—(Contd)	
-For malicious prosecution	
Sce under Malicious Prosecution—Compensation for. ——For misfeasance: See Misfeasance.	
For money had and received	A 62 N 2
-For money paid in land acquisition proceedings-Plaintiff entitl to compensation money but defendant receiving it-Suit	e d by
plaintiff for money received by defendant—Limitation For money paid upon existing consideration portion of which on	A 62 N 22
afterwards fails—Suit, whether maintainable	A 97 N 4
-For non-completion of land acquisition	
(a) Sunt for Limitation	A 18; A 18 N 1
(b) Suit for damages which could not be foreseen at the tire	ne A 18 N 1
of acquisition proceedings (c) Suit in respect of land vesting in Government but Collect	
refusing to make order for compensation—Limitation	A 18 N 1
For non-delivery of goods purchased and paid for-Cause of actio	n,
when arises—Refusal to pay compensation, if gives fresh cause	ol covo
action	s9N9
See Non-feasunce—Compensation for	
For recovery of amount wrongfully taken by defendant from	
Government treasury under legal process	A 29 N 6
For recovery of compensation for breach of covenant for title	or A 62 N 5
for quiet enjoyment	A 02 N 0
tract for supply of goods and value of goods delivered—Limitation	
For recovery of specific property	at A 36 N 3
For recovery of specific property seized	A 29 N 6
For return of moneys wrongfully levied by defendant, whether or	
for compensation	A2N6
For return of octroi duty returnable under lawWhether com	69 A2N6
-For slander—Suit for	. A 25 N 1
-For trees wrongfully cut by mortgagee, whether one for collection	19
made by mortgages	A 105 N 3
——For trespass	
See under Trespass — For wrongful seizure of moveable property under legal proce	-
-Limitation-Art, 11 and Art. 29 distinguished	A 11 N 10
-For wrongful taking or detaining specific moveable property -	
Limitation	A 48
-For wrongful taking or injury or detention of moveable propert	1 10 ST F
—Meaning of	1 110 17 0
ar 1 4 11 to are 3110	1 115 17 0
Suit against carrier for non-delivery of goods Suit against Government under Land Acquisition (Mines) Act	
—Suit by co-sharer for loss resulting from neglect and misconduct of	
lambardar—Limitation	
-Suit by vendee under S. 65, Contract Act	A 116 N 17

2742 GENERAL INDEX Compensation—(Contd.) - Suit by vendor against vendoo for vendor's failure to pay vendee's debt as contracted and for which purchase money has been left A 83 N 7 in vendee's band -Suit for-Whether one for money paid upon existing considera. A 97 N 2 tion which afterwards fails - Suit for compensation and suit for secounts-Distinguished A 116 N 1 -Suit for compensation which could not be foreseen at the time of A 18 N 1 land acquisition proceedings-Limitation Compromise Defendant fundertaking to delivor certain quantity of grain to plaintiff yearly-Failure to pay each year, if gives rise to a fresh S 23 N 19 . cause of action Computation of time --- Mentioned in instruments (a) All instruments to be deemed to be made with reference to S 25 the Gregorian calendar (b) Bond by Hindu bearing native date only for repayment of money within one year-Limitation for suit on bond, bow S 25 to be computed (c) Instrument fixing 30th of a native month for payment-Month containing only 29 days-Cause of action arises only S 95 N 3 on 1st of next month (d) Intention of parties that months should be reckoned in a S 25 N 2 particular manner-S. 25, if applies (e) Intention of parties to use a calendar other than Gregorian spparent clearly-Words month and year, if to be reckoned S 25 N 3 according to Gregorian calendar (f) Promissory note bearing native date only and payable four S 25 months after date-Limitation, how to be computed (g) Reckoning according to Grogorian calendar giving a larger S 25 N 2 period to plaintiff-Such reckoning if to be adopted Condition -Breach of A 143 N 3 (a) Forfeiture and breach of condition distinguished (b) Suit on ground of -For possession (1) By landlord - Against alience of tenant - Limita. A 143 N 2 ; A 143 N 5 (ii) By landlord - Against whom must the suit be for A 143 N 2 applicability of Art. 143 A 143; A 143 N 2; A 143 N 14 (ui) Limitation-Starting point ... A 143 N 2 (iv) Suit in tort for ejectment of tenant-Limitation (v) Suit under Bengal Tenancy Act, S. 155 for ejectment A 143 N 3 of tenant on ground of misuse of land-Limitation ... A 143 N 13

(vi) Suit under T. P. Act. S. 119-Limitation Condition subsequent A 113 N 4 - Suit to enforce-Whether snit for specific performance of contract: A 113 N 4 ---What is ... Conjugal rights Suit for restitution (a) Cause of action, whether continuing one within Sec. 23. A 120 N 46 Limitation Act A 120 N 46 ...

•••

...

...

(b) Limitation ...

GENERAL INDEX	2743
Consent decree	
For time-barred claim-Court, if entitled to raise question when claim is time-barred	S 3 N 20
Consideration	
- Existing consideration which afterwards fails - Suit for money	
paid.—Limitation —Valuable consideration—See under Valuable Consideration	A 62 N 13
Valuable consideration See under valuable Consideration Want of Suit for setting aside document on ground of want of	
consideration—Limitation—Starting point	A 91 N 20
Continuing breaches and wrongs	
- Applicability of S. 23 to declaratory suits based on a continuing	
Wrong	S 23 N 4
- Breach of continuing guarantee - Whether a continuing hreach of	
contract	S 23 N 10
-Breach of contract to keep huilding in repair-Whether a con-	S 23 N 5
tinuing breach of contract so long as huilding is out of repair Breach of covenant for quiet possession—Whether n continuing	5 23 N 0
Wiong the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution of the constitution	S 23 N 7
-Breach of covenant for title-Whether a continuing wrong	S 23 N 6
-Breach of ohligation to give possession - Whether a continuing	
hreach of contract	5 23 N 9
-Closing of drain by defendant through which plaintiff is entitled	
to throw the water from his house - Whether a continuing	S 23 N 12
wrong Continuing breach — Whether implies the right of the person	D 25 IX 12
committing the breach to resume performance of the contract	S 23 N 7
-Contract by one person with another to allow the latter to take	
forest produce for a certain period from certain forest-Breach of	
ohligation to allow taking of produce—Whether a continuing hreach of contract during the period fixed in the contract	S 23 N 11
Contract for payment of money-Non-payment of money, if a	5 20 11 11
continuing breach of contract	S 23 N 8
—Failure on the part of lessee to plant certain trees within time fixed in the contract — Whether a continuing hreach of con-	
tract tract	S 23 N 11
-Fresh period of limitation begins to run at every moment of time	201112
during which the breach or wrong continues	S 23
—Obstruction caused by closing the main sluice of a tank through which plaintiff takes his water to his lands—Whether a continu-	
ing wrong	S 23 N 12
Obstruction of passage in which plaintiff is entitled to discharge	
rain water of his house as well as water from his drains — Wha-	
ther a continuing wrong Obstruction to plaintiff's right to discharge surface water of	S 23 N 12
plaintiff's land over defendant's land — Whether a continuing	
Wrong	S 23 N 12
- Obstruction to right of way-Whether a continuing wrong	S 23 N 13
- Obstruction to water-course and to flow of water-Whether a conti-	S 23 N 12
Occupation for private residence of a balakhana over a mosque-	~ 20 21 22
Whether a desecration of a place of worship and a continuing	
wrong	S 23 N 16

Continuing burnels and market (C. 17)	
Continuing breaches and wrongs—(Contd.)	
Omission of directors of company to come to any conclusion on	
important piece of husiness duly proposed for decision of Board	
-Breach of duty, if a continuing wrong	S 23 N 11
Ouster from possession-Duty to give up possession to person	
ousted—Breach of duty, if a continuing wrong	S 23 N 16
Proceedings to which S. 23 applies	S 23 N 4
Procuring wrongful attachment under S. 146, Criminal P. C	
Whether a continuing wrong	S 23 N 17
-Refusal of conjugal rights-Whether a continuing wrong	S 23 N 15
S. 23 will not apply unless there is a wrong and the wrong is a	
continuing one	S 23 N 2
Test to see if a breach is a continuing one	S 23 N 7
Trespass Trespass amounting to complete ouster—Cause of action	
for suit for possession—Whether a continuing one	S 23 N 16
Violation of right of ferry by setting up another ferry — Whether	
violation of right of ferry my setting up another ferry — whereas	S 23 N 14
a continuing wrong so long as latter ferry is allowed to remain	
	S 23 N 16
continuing wrong	D 20 11
	S 23 N 16
ther a continuing wrong	בייות מת מ
Continuing wrong	
- Oausing of nuisance by throwing latrine water through a hole in	
the wall - Whether a continuing wrong	S 23 N 18
Company director under positive duty to pass true accounts to be	
kept by his agents — His negligent failure to do so — Whether a	
continuing wrong	S 23 N 11
-Infringement of right giving a cause of action for a declaratory	
suit, if a continuing wrong	S 23 N 4
Instances—False imprisonment	A 19 N 2
Meaning of	S 23 N 1
(a) Continuance of the effect of wrong is not a continuing	
Wrong wrong is not a comment	S 23 N 3
(b) Order prohibiting persons from taking processions along par-	•
ticular route until they get urder from Civil Courts affirm-	
ing their rights — Such persons trying to disobey order —	
Obstruction by defendant—Defendants, if commit continu-	
ing wrong	S 23 N 2
(c) Plaintiff's trap dashing against stones heaped on the roadway	•
by defendant — Plaintiff's leg baving to be amputated ulti-	0 37 9
mately—Defendant's act, if a continuing wrong · · · ·	S 23 N 3
One set of Jains placing impressions of footprints of saints on a	
sacred hill - Such placing constituting infringement of a right of	S 23 N 18
another set of Jains-Wrong committed, if a continuing one	S 23 M 10
Order of injunction issued against a person restraining him from	
building a certain wall — Such person building up the wall in	S 23 N 18
breach of order—Whether amounts to a continuing wrong	D 20 21 -
Person entitled under the law to a water connexion to his house	
from the municipal main pipe-Manicipality cutting off the con-	
nexion Whether a continuing wrong so long as connexion is	S 23 N 18
withheld	
—Suit for declaration by Hindn reversinner — Test to see if S. 23	S 23 N 4
applies	-

Continuing wrong—(Contd.)	
- Test of applicability of S. 23 is not whether right or its correspond-	
ing obligation is a continuing one, but whether the wrong is a	
	S 23 N 2
Throwing sulphuric acid on another's face—Latter losing one of his	3 43 H 4
Intowing sulphuric acid on another stace—Latter losing one of his	0.00.37.0
eyes after some time—Former's act, if a continuing wrong	S 23 N 3
Trade-mark Infringement nf, is a continuing wrong so long as	C 00 17 10
infringement continues	S 23 N 18
Whether a continuing wrong	S 23 N 18
Contract	
Acknowledgment under circumstances that would vitiate contract	
-Whether can be used under S. 19	S 19 N 69
—Breach of	
(a) Applicability of S. 24	S 24 N 2
(b) By either party repudiating his liability and declining per-	
formance — Illustrative cases of such breaches	A 115 N 16
(c) Compensation for—See Compensation—Breach of contract	** *** ***
(d) Inducing, whether actionable wrong	A 27 N 1
	A 113 N 2
(e) Person injured by—Remedies of	A 113 N 2
(f) Suit by lessor against lessee for not paying portion of rent to	
superior landlord or to creditor of lessor as undertaken -	
Limitation	A 115 N 3
(g) Suit in respect of breach of executory promise - Remedy of	
promisee—What is	A 97 N 11
(h) Suit on-Limitation-Starting point-General rule	A 108 N 2
(i) Snit to enforce payment under adjustment between lessor	
and lessee fixing certain amount due for rent and lessee	
undertaking to pay it to superior proprietor of lessor—Suit,	
whether one for rent or for breach of contract	A 110 N 2
(1) Suit to recover amount payable by defendant for breach of	
agreement under which he was bound to pay chare of pro-	
duce annually—Lamitation	A 115 N 3
(k) Suit to recover difference between sum advanced no written	10 11 0
contract for supply of goods and value of goods delivered -	
Limitation	A 62 N 5
(1) 7771	A 115 N 16
Breach of registered contract—Compensation for	11 110 11 10
See Compensation—Breach of registered contract	
-Broach of unregistered contract	
(a) Compensation for	
See Compensation—Breach of unregistered contract	1 05 17 1
(b) Suit for-Limitation - Art. 115 and Art. 65 distinguished:	A 65 N 1
Contingent contract-Breach of-Suit for-Lumitation Starting	1 05 17 1
point	A 65 N 1
-Continuing breach of contract - Fresh period of limitation begins	~ ~~
to run at every moment of time during which breach continues :	S 23
Contract for payment of monoy Cause of action for suit, when	
arises	S 23 N 8
Contract for pro-emption Whether subject to rule against	
perpetuity enacted in S. 14, T. P. Act	4
	A 10 N 5
——Contract for sale of immovable property — Whether gives rise to a	
Contract for sale of immovable property Whether gives rise to a	S 10 N 11
——Contract for sale of immovable property — Whether gives rise to a	

Contract_(Contd.)

Contract_(Contd.)	
-Cootract of ageocy - Suit for accounts on ground of breach by	
priocipal against agent—Whother governed by residuary Art. 115:	A 115 N 1
- Contract performable on demand - The words "oo demand"	A 65 N 2
whether by themselves make demand a term of contract — Contract to be performed at a specified future date — Breach of—	A OU N A
Suit for—Limitation	A 65 N 1
- Contract - What is - A ward of arbitrators, whether contract	A 115 N 11
Eoforcement of	1 440 N O
(a) Suit for—Whether lies by third party to contract	A 116 N 2
(b) Suit for recovery by pnrchaser of debt due by one party to another under contract—Limitation	A 115 N 3
(c) Suit oo cootract embedying a promise to pay a time-barred	
deht—Limitation	A 115 N 3
- Express promise to pay existing debt - Whether constitutes new	S 19 N 8
contract	S 23 N 10
	S 3 N 24
If can override statute	
(a) Breach of—Suits on—What are—Illustrative cases	A 115 N 4
(b) Suit based on, for account of profits by proprietor against	A 120 N 2
lambardar—Limitation Joint promisors—Liability of—Whether joint and several	S 13 N 5
Law governing, how determined	S 11 N 1
— Meaolog of	A 113 N 2
- Meaning of, under Bengal Chaukidari Act	A 113 N 3
Mooey paid on	
(a) Suit on ground of contract becoming void — Limitation —	A 97 N 11a
Starting point (b) Suit on ground that agreement is discovered to be void—	
Lamitatico	A 97 N 11a S 10 N 11
- Obligation based on contract-Whether can give rise to a trust	S 10 N 11
-Of todemnity-See under Indemnity.	
Party having successive causes of action under contract—Each cause of action, if gives fresh start to period of limitation	S 23 N 19
Promise to do something io consideration of the other party giving	
up his origical right against promisor — Whether amounts to	S 19 N 8
fresh cootract giving rise to new cause of action —Promise to pay involved in acknowledgment of deht—Whether	
constitutes fresh cootract and new cause of action	S 19 N 8
-Promise which is implied only as matter of law or legal fiction-	A 83 N 2
Whether cootract	A OD -
	A 103 N 11
tion	
(b) Contract to pay dower debt under Mahomedan law-Suit on	A 104 N 1
—Limitatioo (c) Statement of account in respect of money due upoo—Suit	
filed upon original contract within six years thereof but	
beyond three years of statement of accounts—Suit, whether	A 64 N 6
(d) Terms which law implies or reads as part of contract, whe-	A 116 N 4
ther can be excluded by express condition in cootract	W IIn v.

GENERAL INDLX	2747
Contract—Registered contract—(Contd)	
(e) What is-Mere attestation of deed before Kazee, whether	
amounts to registration within Art. 116	A 116 N 5
(f) Whether includes all terms which law implies or reads as	
part of contract	A 116 N 4
Rescission of (a) Cases where rescission may be adjudged by the Court	A 114 N 1
(b) Suit by donor for recovery of gift property on failure of	
donee to fulfil certain conditions, whether one for rescission	
of contract	A 114 N 1
(c) Snit by person not party to instrument, for cancelling or	
setting it asido, whether snit for receission of contract (d) Suit by reversioner for recovery of property from alience of	A 114 N 1
widow, whether suit for resession of contract	A 114 N 1
	4; A 114 N 2
(f) Suit for dissolution of partnership, whether one for rescission	
of contract	A 114 N 1
(g) Whether can be only between promisor and promises	A 114 N 1
-Salo of immovable property-Part of consideration left with	
vendeo under contract that latter should pay it to vendor's credi- tors—Trust, if croated	S 10 N 11
tors—Trust, it croated	M 40 M 11
(a) Agreement by vendee to re-convoy property to vendor-	
Limitation	A 113 N 8
(b) Contract for sale of immovable property providing for execu-	
tion of sale deed 'on demand' from vendee—Limitation	A 113 N B
(o) Contract of sale of immovable property contingent on ven-	
dor's title being declared in pending suit-Limitation	A 113 N 7
(d) "Date fixed for performance of contract"—What is	A 113 N 7
(e) Defences to suits for—What are	A 100 N 9
(f) No date fixed for performance of contract—Limitation	A 113 N 8
(g) Suit by mortgagee for possession of immovable property	
mortgaged where mortgage instrument recites that pos- session has been given to mortgagee—Whother one for	
specific performance of contract	A 135 N 4
(h) Suit by mortgagee to enforce stipulation in mortgage instru-	
ment that mortgagor should give possession to mortgageo-	
Limitation	A 135 N 4
(1) Sale los sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales sales	3; A 113 N 6
(j) Suit for—What is—Illustrative cases	A 113 N 2
(k) Suit for compensation for breach of contract, whether suit	
for specific performanco	A 113 N 2
(i) Suit for possession and suit for specific performance by giving possession—Distinction between—Illustrative cases	A 113 N 3
possession—Distinction between—Hustrative cases (m) Suit on contract in deed of exchange providing that one	W 119 W 9
party should return portion equal in value for loss of the	
part taken away from other	A 113 N 4
(n) Suit to enforce award, whether suit for specific performance	
of contract	A 113 N 5
(o) Suit to onforce condition subsequent—Limitation	A 113 N 4
(p) What 13	A 113 N 2

S 23 N 19

(a) Defendant under compromise undertaking to deliver a certain quantity of grain to plaintiff yearly—Failure to pay each year gives rise to a fresb cause of action

Contract -(Contd.)

_Successive breaches of contract

	~
(b) Instalment bond stipulating that debtor will pay a certain	
sum monthly and that if five consecutive instalments are	
not paid, creditor might call for payment of whole amount	
-Case, if one of successive breaches	S 23 N 19
.)	S 23 N 19
• • • • • • • • • • • • • • • • • • • •	D 23 21 21
. 3	7 40
•	S 23 N 19
(a) Whath we are not a consider control of action	S 23 N 19
(e) Whether give rise to auccessive causes of action	D 20 2.
——Suit for money paid in consideration of	
(a) Where consideration fails through, Court of law refusing to	
enforce its specific performance - Limitation-Starting	•
	A 97 N 11
point	W 21 71 72
(b) Where valid promise ceases to be enforceable by act promis-	
ed becoming impossible or unlawful-Limitation-Starting	
	A 97 N 11
point	A 97 N 11
(c) Whether time runs from failure to perform a promise	Y Al II IV
Suit upon	
	A 36 N 3
(a) Malleasance—Illustrative cases	A 36 N 3
(b) Misfeasance—Illustrative cases	A 30 M
) ar a mai	A 36 N 3
	53 N 14
Time-barred deht, agreement to pay-If valid and binding	
-Time for performance of contract extended-Limitation for suit on	
contract, when commences	S 19 N 73
contract, when commences	
- Unregistered contract-Suit for difference in value between snms	
advanced for supply of kankar and value of kankar delivered-	A 115 N 3
Limitation	A 115 M
	_
- Valid contract-Acknowledgment in writing containing express	A 110 N 12
promise to pay rents barred by limitation, whether vaild contract:	A LAG
- Verhal contract-Money payable in instalments-Suit on-Limi-	
	A 75 N 3
	_
What is	
	1 113 N 5
(a) Award, whether contract	A 113 N 5
(a) Award, whether contract (b) Contract in Art 116.—Whether includes award	3 116 N L3
(b) Contract in Art. 116.—Whether includes award	A 116 N 13
 (b) Contract in Art. 116.—Whether includes award (c) Contract under Art. 116.—Whether includes implied contract: 	A 116 N 4 A 116 N 4 A 113 N 3
(b) Contract in Art. 116.—Whether includes award	A 116 N 4 A 116 N 4 A 113 N 3
(b) Contract in Art. 116.—Whether includes award (c) Contract under Art. 116.—Whether includes implied contract: —Whether refers to transactions which creato real rights	A 116 N 4 A 116 N 4 A 113 N 3 S 23 N 1
(b) Contract in Art. 116—Whether includes award (c) Contract under Art. 116—Whether includes implied contract: —Whether refers to transactions which creatoreal rights —Wrong arising out of contract—What is	A 116 N 4 A 116 N 4 A 113 N 3 S 23 N 1
(b) Contract in Art. 116.—Whether includes award (c) Contract under Art. 116.—Whether includes implied contract: —Whether refers to transactions which creato real rights	A 116 N 4 A 116 N 4 A 113 N 3
(b) Contract in Art. 116.—Whether includes award (c) Contract under Art. 116.—Whether includes implied contract: —Whether refers to transactions which creatoreal rights —Wrong arising out of contract—What is —Wrong independent of contract—What is	A 116 N 4 A 116 N 4 A 113 N 3 S 23 N 1 S 23 N 1
(b) Contract in Art. 116—Whether includes award (c) Contract under Art. 116—Whether includes implied contract: —Whether refers to transactions which creato real rights —Wrong arising out of contract—What is —Wrong independent of contract—What is Contract Act	A 116 N 4 A 116 N 4 A 113 N 3 S 23 N 1
(b) Contract in Art. 116—Whether includes award (c) Contract under Art. 116—Whether includes implied contract: —Whether refers to transactions which creato real rights —Wrong arising out of contract—What is —Wrong independent of contract—What is Contract Act —Consideration under—Definition	A 116 N 19 A 116 N 4 A 113 N 3 S 23 N 1 S 23 N 1
(b) Contract in Art. 116—Whether includes award (c) Contract under Art. 116—Whether includes implied contract: —Whether refers to transactions which creato real rights —Wrong arising out of contract—What is —Wrong independent of contract—What is Contract Act —Consideration under—Definition —Section 25	A 116 N 19 A 116 N 4 A 113 N 3 S 23 N 1 S 23 N 1
(b) Contract in Art. 116—Whether includes award (c) Contract under Art. 116—Whether includes implied contract: —Whether refers to transactions which creato real rights —Wrong arising out of contract—What is —Wrong independent of contract—What is Contract Act —Consideration under—Definition —Section 25	A 116 N 14 A 116 N 4 A 113 N 3 S 23 N 1 S 23 N 1 A 97 N 4
(b) Contract in Art. 116—Whether includes award (c) Contract under Art. 116—Whether includes implied contract: Whether refers to transactions which creato real rights Wrong arising out of contract—What is Wrong independent of contract—What is Contract Act Consideration under—Definition Section 25 (a) Promise to pay harred debt—Whether good and enforceable:	A 116 N 19 A 116 N 4 A 113 N 3 S 23 N 1 S 23 N 1
(b) Contract in Art. 116—Whether includes award (c) Contract under Art. 116—Whether includes implied contract: —Whether refers to transactions which creato real rights —Wrong arising out of contract—What is —Wrong independent of contract—What is Contract Act —Consideration under—Definition —Section 25 (a) Promise to pay harred debt—Whether good and enforceable: (b) Whether affected by Limitation Act	A 116 N 14 A 116 N 4 A 113 N 3 S 23 N 1 S 23 N 1 A 97 N 4
(b) Contract in Art. 116—Whether includes award (c) Contract under Art. 116—Whether includes implied contract: —Whether refers to transactions which creato real rights —Wrong arising out of contract—What is —Wrong independent of contract—What is —Contract Act —Consideration under—Definition —Section 25 (a) Promise to pay harred debt—Whether good and enforceable: (b) Whether affected by Limitation Act —Section 25 (3)	A 116 N 14 A 116 N 4 A 113 N 3 S 23 N 1 S 23 N 1 A 97 N 4 S 29 N 3 S 29
(b) Contract in Art. 116.—Whether includes award (e) Contract under Art. 116.—Whether nedudes implied contract: —Whether refers to transactions which creato real rights —Wrong arising out of contract—What is —Wrong independent of contract—What is Contract Act —Consideration under—Definition —Section 25 (a) Promise to pay harred dobt—Whether good and enforceable: (b) Whether affected by Limitation Act —Section 25 (3) (a) Promise—Whether includes promise which is merely implied	A 116 N 14 A 116 N 4 A 113 N 3 S 23 N 1 S 23 N 1 A 97 N 4 S 29 N 3 S 29
(b) Contract in Art. 116—Whether includes award (c) Contract under Art. 116—Whether includes implied contract: Whether refers to transactions which creato real rights Wrong arising out of contract—What is Wrong independent of contract—What is Contract Act Consideration under—Definition Section 25 (a) Promise to pay harred debt—Whether good and enforceable: (b) Whether affected by Limitation Act Section 25 (a) Promise—Whether includes promise which is merely implied in acknowledgment of Inability	A 116 N 14 A 116 N 4 A 113 N 3 S 23 N 1 S 23 N 1 A 97 N 4
(b) Contract in Art. 116—Whether includes award (c) Contract under Art. 116—Whether includes implied contract: Whether refers to transactions which creato real rights Wrong arising out of contract—What is Wrong independent of contract—What is Contract Act Consideration under—Definition Section 25 (a) Promise to pay harred debt—Whether good and enforceable: (b) Whether affected by Limitation Act Section 25 (a) Promise—Whether includes promise which is merely implied in acknowledgment of Inability	A 116 N 14 A 116 N 4 A 113 N 3 S 23 N 1 S 23 N 1 A 97 N 4 S 29 N 3 S 29
(b) Contract in Art. 116—Whether includes award (c) Contract under Art. 116—Whether includes implied contract: —Whether refers to transactions which creato real rights —Wrong arising out of contract—What is —Wrong independent of contract—What is Contract Act —Consideration under—Definition —Section 25 (a) Promise to pay harred debt—Whether good and enforceable: (b) Whether affected by Limitation Act —Section 25 (3) (a) Promise—Whether includes promise which is merely implied in acknowledgment of Italitity —————————————————————————————————	A 116 N 14 A 116 N 14 A 113 N 3 S 23 N 1 S 23 N 1 A 97 N 4 S 29 N 3 S 29
(b) Contract in Art. 116—Whether includes award (c) Contract under Art. 116—Whether includes implied contract: Whether refers to transactions which creato real rights Wrong arising out of contract—What is Wrong independent of contract—What is Contract Act Consideration under—Definition Section 25 (a) Promise to pay harred debt—Whether good and enforceable: (b) Whether affected by Limitation Act Section 25 (a) Promise—Whether includes promise which is merely implied in acknowledgment of Inability	A 116 N 14 A 116 N 4 A 113 N 3 S 23 N 1 S 23 N 1 A 97 N 4 S 29 N 3 S 29

GENERAL INDEX	2149
Contract Act_(Contd.)	
Section 65	
(a) Liability under—Suit on—Limitation	A 97 N 11a
(b) Suit for compensation by vendee—Limitation	A 116 N 17
- Sections 69, 70-Obligation under-Snit for enforcement-Limi-	
4.41	A 83 N 3
	A 65 N 3
- Section 222-Obligation under-Suit for enforcement by agent	1 00 17 1
against principal—Limitation	A 83 N 4
Contribution	
——Right of	
(a) Basis of—When arises A 99 N	3; A 100 N 1
(b) Between co-sureties-Basis of	A 82 N 1
(c) Between joint tort-feasors	A 99 N 8
(d) Suit to claim-Art. 99, whether exhaustive of cases in which	
such right can be claimed	A 99 N 4
-Right to-When arises	A 120 N 25
-Suit by co-trustee to onforce claim against estate of deceased	
trusteo	
	0, A 100 N 2
(b) Right of contribution—When arises	A 100 N 1
(c) Where one trustee is less guilty than another and has had to	
rofund the loss	A 100 N 1
- Suit by co-trusee to enforce claim against living trustee-Limita.	
tion	A 100 N 1
-Suit for	
(a) By co-mortgagor paying off mortgage, against other co-	
mortgagor-Limitation-Starting point	A 132 N 10
(b) By cosharer in mortgage right in respect of costs incurred in	
suit on mortgage in which decree was passed in favour of,	
all cosharers—Limitation	A 61 N 12
(c) By cosharer who has paid whole or more than his share of	
point hability-Execution of mortgage, whether payment	A 99 N 5
(d) By cosharer who has paid whole or more than his share of	
revenue due	
(1) Descrit in Court whether nermant for qual quit	A 99 N 6
	A 99; A 99 N 9
••	
	A 99 N 5
(iv) Payment of revenue, whether creates charge in favour	
of names on charge of socharges	A 99 N 7
	A 99 N 2
•••	A 99 N 3
	2 99, A 99 N 2
· of joint	1 00 37 5
(ix) Where payment of revenue is held to create chargo in	A 99 N 5
	A 97 N 7
(x) Where plaintiff borrows money from third person and	ASINI
pays Government revenue and subsequently paying off	
third person, ones his cosharers for contribution	V 88 Z 3
(e) By executant of joint promissory note against joint promisor	
** n	V 83 Z 11
—Limitation	11

Gentribution—Suit for—(Gentd.) (f) By joint promisor against other promisor for share of money

(i) By joint promisor against other promisor for share of money
paid under must pramissory nate—Limitation A 81 N 2
(g) By manager of joint family for payments made in excess of
bis share towards family expenses—Limitation A 99 N 4
(h) By manager in respect of payment on account of joint estate
(1) Claim, whether can be taken into account in adjusting
equities in subsequent partition A 107 N 4
(11) Limitation—Starting point A 107; A 107 N 3
(iii) Manager borrnwing money in his private capacity and expending the same for the estate—Limitation A 107 N 3
(iv) Person innurring debt as manager of the family and spending it for the estate Limitation
(v) regul of construction—Dasis in
(vi) Suit by person who was manager brought after parti-
tion—Limitation A 107 N 2
(vii) Suit falling under both Articles 107 and 99 - Limi-
tation A 107 N 2
(a) But and an assument in particular of company or improvement of com-
mon property—Limitation (i) By one co-tenant against nthors — Landlord impleaded to
A 120 N 20
tandiora—Limitation
(I) By party who has paid whole or more than his share of
amount due under joint decree
(i) Deposit in Court, whether payment
(ii) Mere incurring of pecuniary lishility in shape of bond
or promissory note, whether payment
(iii) Right of contribution in such cases—When arises—
Dasis of A 99 N 9
(IV) Inmitation—Starting point—Ithastrative cases on 100 N 2
(v) Special and general provisions of limitation A 35, 100 N 2
(VI) Dull against partners
(viii) Where payments towards the decree are made in
instalments A 35 11
(m) By surviving partner against representatives of deceased A 120 N 2
partner after dissolution of partnership-Limitation A 120 K
(n) Decree obtained against B and C for contribution — Failure
to recover from C his share of amount — Suit against B for
recovery of whole amount under Contract Act. S. 43-
Limitation A 61 N 3
A 120 N 25
(p) minustion for shits int failing inder Arts 01, 55, 20.
(q) One person liable to contribute to another for joint debt
which latter has discharged — Mere admission by former
that debt is a joint debt — Whether sufficient acknowledg. S 19 N 27
ment of habitity
(r) Right to sue, when arises on date of payment by plaintiff A 120 17

Contribution—Suit for—(Contd.)	
(s) Suit, in substance, me for account and share of dissolved partnership — Whether can be treated as one for account and share of dissolved partnership	
-To one tenant from his co-tenants in respect of rent of landlord	
—Whether rent	A 110 N 2
Conversion	
—Meaning of	A 48 N 6
	A 48 N 6
Conveyance	
—Drawing up of—Whether 'particular husiness' within Art. 84 Conveyed or bequeathed in trust	A 84 N 3
— Meaning of, within Art. 134	A 134 N 4
-Alienee from - Possession of - Whether adverse to other co-	
owners—See under Adverse possession	
Co-owner fraudulently allowing revenue to fall into arrears and	
then purchasing estate himself — Suit by other co-owner to be relieved from the effect of fraud—Limitation	A 95 N 4
Co-owner of jagir appointed by Government as manager-Suit by	
heneficial owners for accounts—Limitation	A 62 N D
—Diversion of land to purpose other than that to which it is set	
apart — Diversion amounting to ouster of other co.owner — Suit	A 120 N 10
_ ' ;	
	0 5 144 37 48
doubted A 14 ——One co-owner, if can acquire easement for beneficial enjoyment of	2 & 144 N 45
One co-owner, if can acquire easement for beneficial enjoyment of property	2 & 144 N 45 S 26 N 5
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits	
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits Rents collected by—Amount due to another co-owner in respect of	S 26 N 5
One co-owner, if can acquire easement for beneficial enjoyment of property one co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits Rents collected by—Amount due to another co-owner in respect of such collection—Whether rent	S 26 N 5
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits Rents collected by—Amount due to another co-owner in respect of such collection—Whether rent Right of co-owner to partition in joint property—Breach of—Whether a continuing wrong	S 26 N 5
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits Rents collected by—Amount due to another co-owner in respect of such collection—Whether rent Right of co-owner to partition in joint property—Breach of—Whether a continuing wrong Right to profits of—Whether barred after twelve years where	S 26 N 5 S 10 N 7 A 110 N 2, 3
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits Rents collected by—Amount due to another co-owner in respect of such collection—Whether rent Right of co-owner to partition if joint property—Breach of Whether a continuing wrong Right to profits of—Whether barred after twelve years where other co-owner exclusively claums possession of whole property	S 26 N 5 S 10 N 7 A 110 N 2, 3 S 23 N 1
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits Rents collected by—Amount due to another co-owner in respect of such collection—Whether rent Right of co-owner to partition if joint property—Breach of—Whether a continuing wrong Right to profits of—Whether barred after twelve years where other co-owner exclusively claims possession of whole property and also receives whole profits therefrom Sale of share of joint property—Suit by vendee for possession—	S 26 N 5 S 10 N 7 A 110 N 2, 3
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits Rents collected by—Mnount due to another co-owner in respect of such collection—Whether rent Right of co-owner to partition in joint property—Breach of—Whether a continuing wrong Right to profits of—Whether barred after twelve years where other co-owner exclusively claums possession of whole property and also receives whole profits therefrom Sale of share of joint property—Suit by vendee for possession—Limitation—Starting point.	S 26 N 5 S 10 N 7 A 110 N 2, 3 S 23 N 1
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits Ronts collected by—Amount due to another co-owner in respect of such collection—Whether rent Right of co-owner to partition if joint property—Breach of—Whether a continuing wrong Right to profits of—Whether barred after twelve years where other co-owner exclusively claums possession of whole property and also receives whole profits therefrom Sale of share of joint property—Suit by vendee for possession— Limitation—Starting point Stranger dispossessing co-owners and holding land adversely against	S 26 N 5 S 10 N 7 A 110 N 2, 3 S 23 N 1 A 109 N 3
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits Rents collected by—Amount due to another co-owner in respect of such collection—Whether rent Blight of co-owner to partition in joint property—Breach of—Whether a continuing wrong Rlight to profits of—Whether barred after twelve years where other co-owner exclusively claums possession of whole property and also receives whole profits therefrom Sale of share of joint property—But by venden for possession—Limitation—Stranger dispossessing co-owners and holding land adversely against co-owner—Suranger dispossessing co-owners—and holding land adversely against co-owners—Death of one cn-owner—Stranger succeeding to his	S 26 N 5 S 10 N 7 A 110 N 2, 3 S 23 N 1 A 109 N 3
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits Rents collected by—Amount due to another co-owner in respect of such collection—Whether rent Right of co-owner to partition if joint property—Breach of Whether a continuing wrong Right to profits of—Whether barred after twelve years where other co-owner exclusively claums possession of whole property and also receives whole profits therefrom Sale of share of joint property—Suit by vendee for possession— Limitation—Starting point Stranger dispossessing co-owners and bolding land adversely against eco-owners—Death of one cn-owner—Stranger succeeding to his interest—Other co-owner's cause in action against stranger, if put an end to	S 26 N 5 S 10 N 7 A 110 N 2, 3 S 23 N 1 A 109 N 3
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits Ronts collected by—Amount due to another co-owner in respect of such collection—Whether rent Hight of co-owner to partition in joint property—Breach of—Whether a continuing wrong Right to profits of—Whether barred after twelve years where other co-owner exclusively claims possession of whole property and also receives whole profits therefrom Sale of share of joint property—Suit by vendee for possession—Limitation—Starting point Stranger dispossessing co-owners and holding land adversely against co-owners—Death of one cn-owner—Stranger succeeding to his interest—Other co-owner's cause of action against stranger, if put an end to	S 26 N 5 S 10 N 7 A 110 N 2, 3 S 23 N 1 A 109 N 3 A 136 N 6 S 9 N 11
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits Rents collected by—Amount due to another co-owner in respect of such collection—Whether rent Right of co-owner to partition if joint property—Breach of Whether a continuing wrong Right to profits of—Whether barred after twelve years where other co-owner exclusively claums possession of whole property and also receives whole profits therefrom Sale of share of joint property—Suit by vendee for possession— Limitation—Starting point Stranger dispossessing co-owners and bolding land adversely against eco-owners—Death of one cn-owner—Stranger succeeding to his interest—Other co-owner's cause in action against stranger, if put an end to	S 26 N 5 S 10 N 7 A 110 N 2, 3 S 23 N 1 A 109 N 3 A 136 N 6
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits Rents collected by—Amount due to another co-owner in respect of such collection—Whether rent Right of co-owner to partition if joint property—Breach of—Whether a continuing wrong Right to profits of—Whether barred after twelve years where other co-owner exclusively claums possession of whole property and also receives whole profits therefrom Sale of share of joint property—Suit by vendee for possession—Limitation—Starting point Stranger dispossessing co-owners and holding land adversely against eo-owners—Death of one cn-owner—Stranger succeeding to his interest—Other co-owner's cause in action against stranger, if put an end to Suit by (a) Against other co-owner for profits—Limitation (b) Against other co-owner who has mortgaged property and received the mortgage money—Limitation	S 26 N 5 S 10 N 7 A 110 N 2, 3 S 23 N 1 A 109 N 3 A 136 N 6 S 9 N 11
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits Rents collected by—Amount due to another co-owner in respect of such collection—Whether rent Right of co-owner to partition in joint property—Breach of—Whether a continuing wrong Right to profits of—Whether barred after twelve years where other co-owner exclusively claims prossession of whole property and also receives whole profits therefrom Sale of share of joint property—Suit by vendee for possession—Limitation—Starting point Stranger dispossessing co-owners and holding land adversely against co-owners—Death of one cn-owner—Stranger succeeding to his interest—Other co-owner scause of action against stranger, if put an end to Suit by (a) Against other co-owner for profits—Limitation (b) Against other co-owner who has mortgaged property and received the mortgage money—Limitation (c) Against trespasser for profits — Cowner, whether can	S 26 N 5 S 10 N 7 A 110 N 2, 3 S 23 N 1 A 109 N 3 A 136 N 6 S 9 N 11 A 120 N 25
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits Rents collected by—Amount due to another co-owner in respect of such collection—Whether rent Right of co-owner to partition if joint property—Breach of—Whether a continuing wrong Right to profits of—Whether barred after twelve years where other co-owner exclusively claums possession of whole property and also receives whole profits therefrom Sale of share of joint property—Suit by vendee for possession—Limitation—Starting point Stranger dispossessing co-owners and holding land adversely against eo-owners—Death of one cn-owner—Stranger succeeding to his interest—Other co-owner's cause in action against stranger, if put an end to Suit by (a) Against other co-owner for profits—Limitation (b) Against other co-owner who has mortgaged property and received the mortgage money—Limitation	S 26 N 5 S 10 N 7 A 110 N 2, 3 S 23 N 1 A 109 N 3 A 136 N 6 S 9 N 11 A 120 N 25
One co-owner, if can acquire easement for beneficial enjoyment of property One co-owner receiving rents and profits of property—Whether only constructive trustee for other co-owners in respect of such rents and profits —Rents collected by—Amount due to another co-owner in respect of such rents and profits —Right of co-owner to partition if joint property—Breach of—Whether a continuing wrong —Right to profits of—Whether barred after twelve years where other co-owner exclusively claims possession of whole property and also receives whole profits therefrom —Sale of share of joint property—Suit by vendee for possession— Limitation—Starting point —Stranger dispossessing co-owners and holding land adversely against ec.o-owners—Death of one cn-owner—Stranger succeeding to his interest—Other co-owner's cause of action against stranger, if put an end to recowner who has mortgaged property and received the mortgage money—Limitation (b) Against other co-owner of profits—Limitation (c) Against trespasser for profits—Co-owner, whether can received the mortgage money—Limitation (c) Against trespasser for profits—Co-owner, whether co-owner second without making other co-owners	S 26 N 5 S 10 N 7 A 110 N 2, 3 S 23 N 1 A 109 N 3 A 136 N 6 S 9 N 11 A 120 N 28 A 132 N 8

Contribution-Suit for-(Contd.)

(f) By joint promisor against ather promisor for share of money paid under joint promisory note—Limitation A 81 N 2
(s) By manager of joint family for payments made in excess of
his share towards family expenses—Limitation A 99 N 4
(h) By manager in respect of payment on account of joint estate
(i) Claim, whether can be taken into account in adjusting equities in subsequent partition A 107 N 4
(iii) Manager borrowing monoy in his private capacity and expending the same for the estate—Limitation A 107 N 3
(m) Bearing incoming debt as manager of the femily and
arounding it for the cetate Limitation A 107 N 3
(v) Right of contribution—Basis of A 107 N 2
(vi) Quit by namen who seek manager bequebt after parti-
tion—Limitation A 107 N 2
(vii) Suit falling under both Articles 107 and 99 - Limitation A 107 N 2
(1) By one co-owner in respect of repairs or improvement of com-
(1) By one co-tenant against others — Landlerd impleaded to
obtain refund if others had already paid — Claim against landlord—Limitation A 120 N 25
Additional Established Services
(k) By partner against sub-partner for losses sustained in main partnership—Limitation A 61 N 10
(1) By party who has paid whole or more than his share of
amount due under joint decree
(i) Deposit in Court, whether paying the
(ii) Mere incurring of pocuniary liability in shape of bond
or promissory note, whether payment
(iii) Right of contribution in such cases—When arises—
A GO N 9
(iv) Limitation—Starting point—Histrative cases oo 4 99 N 2
(v) Special and general provisions of limitation A 99 N 2 (vi) Suit against partners A 20 N 2
(vi) Suit against partners (vi) Suit by manager of joint estate of undivided family A 107 N 2
(viii) Where paymonts towards the decree are made in
instalments
(m) By surviving partner against representatives of deceased A 120 N 2
partner after dissolution of partnership—Limitation
(n) Decree obtained against B and C for contribution — Failure
to recover from C his share of amount — Suit against B for
recovery of whole amount under Contract Act. S. 43-
Limitation
(c) Limitation—Starting point (i) General principle applicable (ii) Hundred: (iv) Theoretic A 120 N 25
(ii) Illustrative cases (iii) Illustrative cases A 120 N 25
(a) One person liable to contribute to enother for joint debt
which letter has discharged — More admission by lorner
that debt is a joint debt — Whether sufficient acknowleds. c 19 N 27
ment of finding 100 N 20
(r) Right to sue, when arises on date of payment by plaintiff A 120 A

Contribution—Suit for—(Contd.)	
(s) Suit, in substance, one for account and share of disselved	
partnership — Whether can be treated as one for account	1 100 37 0
and share of dissolved partnership To one tenant from his co-tenants in respect of rent of landlord	A 106 N 2
-Whether rent	A 110 N 2
Conversion	
— Meaning of What is—Wrengful taking and wrongful detentioo—Whether con-	A 48 N 6
versien of property	A 48 N 6
Conveyance	
— Drawing up of—Whether 'particular business' within Art. 84 Conveyed or bequeathed in trust	A 84 N 3
Meaning of, within Art. 134	A 134 N 4
Co-owner	
—Alience frem — Possession of — Whether adverse to other ce- owners—See under Adverse possession	
Co-owner fraudulently allowing revenue to fall into arrears and	
then nurchasing estate himself - Suit by other co-owner to be	
relieved from the effect of fraud—Limitation	A 95 N 4
	A 62 N 9
Diversion of land to purpose other than that to which it is set	A 02 N 9
apart — Diversien amounting to ouster of other co-owner — Suit	
	A 120 N 10
-	
doubted A 14	2 & 144 N 45
One co-owner, if can acquire easement for beneficial enjoyment of	
property One co-owner receiving rents and profits of property—Whether	S 26 N 5
only constructive trustee for other co-owners in respect of such	
rents and profits	S 10 N 7
-Rents collected by-Amount due to another co-oweer in respect of	
such collection—Whether rent	A 110 N 2, 3
Whether a continuing wrong	S 23 N 1
-Right to profits of-Wbether barred after twelve years where	
other co-owner exclusively claims possession of whole preperty and also receives whele profits therefrom	4 100 27 0
	A 109 N 3
Limitation-Starting peint	A 136 N 6
——Stranger dispossessing co-owners and bolding land adversely against	
co-owners—Death of one co-owner—Stranger succeeding to his interest—Other co-owner's cause of action against stranger, if	
put an end to	S 9 N 11
—Suit hy	_
(a) Against other co-owner for profits—Limitation (b) Against other co-owner who has mortgaged preperty and	A 120 N 28
received the mortgage money—Limitation	A 132 N 8
(c) Against trespasser for profits — Co-owner, whether can	102 11 0
recover whele profits without making other co-owners	
parties	A 109 N 15

Co-owner—Suit by—(Contd.)	
(d) For contribution to expenses incurred for repairs or improve-	
ment of property against nther cn-owner-Limitation	A 61 N 11
(e) For possession against another having adverse possession-	
	45 A 144 N 45 A 109 N 3
(f) For share of his profits—Limitation (g) For share of his profits accruing after cessation of co-owner-	A 103 N 0
ship—Limitation	A 109 N 3
(h) For share of his profits accruing after decree for partition	
and before its execution	A 109 N 3
(a) Alience of father where alienating is set aside at the instance of the sons except as to father's share, whether co-owner	A 109 N 3
(b) Alieneo of Hindu widny where part of alienation is set	
aside after widnw's death at the instance of reversioners,	1 100 NT 9
whether co-owner	A 109 N 3 A 109 N 3
(c) Co-heir inhoriting an estate, whether co-nwner	N 103 11 0
Go-parcener	
- Co-parcener in possession alienating family property but continu.	
ing to stay in the same priperty even after alienation — Possession of such co-parcener, whether adverse from date of alienation:	A 127 N 11
accounts—Limitation A 120	N 15, F N 8
Copy	
Timo for nbtaining-Exclusion of : See Exclusion of time.	
Copyright	
-Infringement of - Compensation for - See Componsation - Fur	
infringement of copyright	
— Meaning of	A 40 N 2
	A 40 N 2 A 40 N 4
When deemed to be infringedEnactment as to · · · · · · · · · · · · · · · · ·	A 40 N 2 A 40 N 4 A 40 N 4
—When deemed to be infringed—Enactment as to	A 40 N 4
—When deemed to be infringed—Enactment as to	A 40 N 4
When deemed to be infringed.—Enactment as to Whether infringed, is question of fact Gorporation Incorporated body (a) Nature of—If has distinct existence in the eye of the law	A 40 N 4 A 40 N 4
When deemed to be infringed—Enactment as to Whether infringed, is question of fact Corporation Incorporated body (a) Nature of—If has distinct existence in the eye of the law anart from persons constituting the body	A 40 N 4
When deemed to be infringed—Enactment as to	A 40 N 4 A 40 N 4
— When deemed to be infringed—Enactment as to	A 40 N 4 A 40 N 4
When deemed to be infringed—Enactment as to	A 40 N 4 A 40 N 4 S 6 N 6 S 6 N 6
— When deemed to be infringed—Enactment as to Whether infringed, is question of fact Corporation — Incorporated body (a) Nature of—If has distinct existence in the eye of the law apart from persons constituting the body (b) Provision as to extension in ease of legal disability—If applies to incorporated body Co-sharer — Alternation by lambardar — Remedy of co-sharers of lambardar not party to alignation	A 40 N 4 A 40 N 4
When deemed to be infringed—Enactment as to	A 40 N 4 A 40 N 4 S 6 N 6 S 6 N 6
When deemed to be infringed—Ensetment as to	A 40 N 4 A 40 N 4 S 6 N 6 S 6 N 6 A 91 N 7
When deemed to be infringed—Enactment as to Whether infringed, is question of fact Corporation Incorporated body (a) Nature of—If has distinct existence in the eye of the law apart from persons constituting the body (b) Provision as to extension in case of logal disability—If applies to incorporated body Co-sharer Altenation by lambaidar — Remedy of co-sharers of lambardar not party to alienation Cosharer in exclusive possession writing to other cosharer calling upon him to pay up his share of expenses incurred for repair—Acknowledgment of other's right implied in letter—Whether	A 40 N 4 A 40 N 4 S 6 N 6 S 6 N 6
Whether infringed, is question of fact	A 40 N 4 A 40 N 4 S 6 N 6 S 6 N 6 A 91 N 7 S 19 N 19
— When deemed to be infringed—Enactment as to Whether infringed, is question of fact Corporation — Incorporated body (a) Nature of—If has distinct existence in the eye of the law apart from persons constituting the body (b) Provision as to extension in case of legal disability—If applies to incorporated body Co-sharer — Altenation by lambuidar — Remedy of co-sharers of lambardar not party to alienation — Cosharer in exclusive possession writing to other cosharer calling upon him to pay up his share of expenses incurred for repair—Acknowledgment of other's right implied in letter—Whether conditional — Cosharer in vatan — Suit by, against another cosharer who has improperly received plaintiff a shares of hak—Lumitation	A 40 N 4 A 40 N 4 S 6 N 6 S 6 N 6 A 91 N 7
When deemed to be infringed—Enactment as to Whether infringed, is question of fact Corporation Incorporated body (a) Nature of—If has distinct existence in the eye of the law apart from persons constituting the body (b) Provision as to extension in case of logal disability—If applies to incorporated body Co-sharer Altenation by lambaidar — Remedy of co-sharers of lambardar not party to alienation Co-sharer in exclusive possession writing to other cosharer calling upon him to pay up his share of expenses incurred for repair—Acknowledgment of other's right implied in letter—Whether conditional Co-sharer in exclusive possession with another cosharer who has improperly received plaintiff's shares of hak—Limitation Cosharer naving off revenue due to Government in order to save	A 40 N 4 S 6 N 6 S 6 N 6 A 91 N 7 S 19 N 19 A 62 N 9
Whether infringed, is question of fact Whether infringed, is question of fact Corporation Incorporated body (a) Nature of—If has distinct existence in the eye of the law apart from persons constituting the body (b) Provision as to extension in case of logal disability—If applies to incorporated body Co-sharer Altenation by lambaidar — Remedy of co-sharers of lambardar not party to alienation Cosharer in exclusive possession writing to other cosharer calling upon him to pay up his share of expenses incurred for repair—Acknowledgment of other's right implied in letter—Whether conditional Cosharer in exclusive possession writing to other cosharer who has improperly received plaintiff's shares of hak—Limitation Cosharer may an off revenue due to Government in order to save cestate—Whether has charge on estate for amount in excess of his share	A 40 N 4 A 40 N 4 S 6 N 6 S 6 N 6 A 91 N 7 S 19 N 19
Whether infringed, is question of fact Whether infringed, is question of fact Corporation Incorporated body (a) Nature of—If has distinct existence in the eye of the law apart from persons constituting the body (b) Provision as to extension in case of logal disability—If applies to incorporated body Co-sharer —Altenation by lambaidar — Remedy of co-sharers of lambardar not party to alienation —Cosharer in exclusive pessession writing to other cosharer calling upon him to pay up his share of expenses ancurred for repair—Acknowledgment of other's right implied in letter—Whether conditional —Cosharer in vatan — Snit by, against another cosharer who has improperly received plaintiff shares of hak—Limitation —Cosharer paying off revenue due to Government in order to save estate—Whether has charge on estate for amount in excess of his share.	A 40 N 4 A 40 N 4 S 6 N 6 S 6 N 6 A 91 N 7 S 19 N 19 A 62 N 9 A 132 N 6
— When deemed to be infringed—Enactment as to Whether infringed, is question of fact Corporation — Incorporated body (a) Nature of—If has distinct existence in the eye of the law apart from persons constituting the body (b) Provision as to extension in case of logal disability—If applies to incorporated body Co-sharer —Altenation by lambaidar — Remedy of co-sharers of lambardar not party to alienation Cosharer in exclusive possession writing to other cosharer calling upon him to pay up his share of expenses incurred for repair—Acknowledgment of other's right implied in lotter—Whother conditional —Cosharer in exclusion—Suit by, against another cosharer who has improperly received plaintiff shares of hak—Limitation —Cosharer paying off revenue due to Government in order to save estate—Whother has charge on estate for amount in excess of his	A 40 N 4 S 6 N 6 S 6 N 6 A 91 N 7 S 19 N 19 A 62 N 9

Cosharer —(Contd.)	
Of joint Mitakshara family	
(a) Exclusion from enjoyment of family property—Suit by, for	
account of profits received by members in possession	. A 109 N 4
(b) Exclusion from family property by another co-parcenes claiming it exclusively—Remedies of	. A 109 N 4
- Repairing of whole house by nne co-sharer does not amount to	42 & 144 N 35
-Rights of Long absence does not impair rights of co-sharer unless	
	42 & 144 N 35
- Separate suits for recovery of specific portions of property in hands	
of cosharers—Suit for general partition as against all cosharers—	
Whether on same cause of action for purposes of S. 14	S 14 N 18
- Suit against, by another cosharer for share of rent received, whe-	
ther one for arrears of rent	A 110 N 3
——Suit by	
(a) Against another cosbarer who has received the former's	
share of money due—Limitation (b) Against cosharer in vatan for share if hags improperly	A 62 N 9
received by defendant—Limitation	A 132 N 20
(c) Against other cosharer for profits—Whether one for compen-	A 102 N 20
sation for breach of contract	A 115 N 1
(d) Against other cosharer for share of profits of common pro-	11 2 2 1. 2
perty received by defendant—Limitation	A 120 N 15
(e) Against other cosharer in respect of perversion by latter of	
joint property intended to be used for specific purpose-	
Limitation	A 32 N 3
(f) For Contribution—See Contribution—Suit for (g) For joint possession—Limitation	A 120 N 37
(h) For rent received by other cosharer where latter is also a	A 120 N 37
tenant—Limitation	A 109 N 13
(i) To declare that alteration by lambardar is not binding on	
bim—Limitation	A 91 N 7
—Tenants-in-common	
(a) One tenant-in-common, if can give discharge on behalf of all	0.011.00
in respect of suit for mesne profits (b) Suit by, for mesne profits—Tenants-in-common, whether	S 7 N 27
persons jointly entitled to see for possession within S. 7	S 7 N 27
	A 90 N 3
Costs	
(a) By attorney, under Civil P. C.—Limitation	A 84 N 4
(b) By attorney, under rules of High Conrt—Limitation	A 84 N 4
(c) By vakil, under Civil P. C.—Limitation	A 84 N 4
(d) By vakil, under Rules of High Court—Limitation	A 84 N 4
Lien for—Whether can be pleaded in defence in snit against atter-	
ney for recovery of documents and papers even if attorney's suit for costs is time barred	A 84 N 6
	A 84 N 5
—Sut for	01 11 0
(a) By advocate—Limitation	A 84 N 2
(b) By attorney-Limitation-Starting point A 84; A 84 N	
(c) By attorney—Against opposita party—Limitation	A 84 N 2
	Lim. 173

Costs—Suit for—(Contd.)			
(d) By attorney for costs against other party acco	rding to pro	vi-	20 N 18
sion of consect decree—Limitation	***		RO IN TO
(e) By attorney where there is express agreeme		A	84 N 2
when costs are to be paid—Limitation	•••	A	81 N 2
(f) By mukhtear—Limitation	***		81 N 2
(g) By pleader—Limitation	•••	A	84 N 2
(r) (p)	۶	4 N 2: A	84 N 7
(i) .		A	81 N 2
(k)		A	81 N 2
(1) By vakil for costs against other party according	ng to provisi	ion	
of consent decroe-Limitation		A 19	30 N 18
(m) By vakil where there is express agreement as	to time wh	en .	04 M 0
costs are to be paid—Limitation	•••	A	84 N 2
(n) For costs undertaken by defendant to pay	to plaintiff	in ,	65 N 1
litigation—Limitation—Starting point	•••	A	00111
Counter-olaim			
Limitation_Date with reference to which limita	tion is det	er-	a at 00
mined	•••	- 8	3 N 29 3 N 29
When can be made	•••	0	D 14 20
Conrt			
Court closed during limitation-Time for appeal i	to High Co	ırt	a st 10
under Civil P. C., whether extended on such groun		A 16	6 N 13
Court of Small Causes			
(a) Judgment of—Application for review		*** A 1	61 N 4
(1) Applicability of S. 5 to such applications	3	A.	A 161
(n) Limitation	Duaniste	no.	
(iii) Security deposit requisite with application	onProvisio	A 1	61 N 4
(b) What is—Court trying snit transferred or wi	thdrawn fro		
Small Causes, whether Small Cause Court f	or purposes	of	44 NT O
such suit	or purpose	Al	61 N 3
Court other than High Conrt			
(a) Appeal to—Under Criminal Procedure Code		154; A 1	54 N 1
(1) Limitation	A	ID4;A1	54 N 1
(ii) Provision for such appeal	T.I.	-;-	
(ni) Where appeal is preferred by appellant	10 Jan 1111	". A 1	54 N 3
tation—Starting point — Inherent power—Re-admission of appeal dismisse	d for want		
prosecution under—Application for—Limitation	4 101 114	A1	68 N 3
— Judicial Commissioner's Court of Sind—Original ju-	risdiction of		62 N 4
Basis of	•••		
Jurisdiction of-General principle that Court once b	aving jurisdi	C- A 18	2 N 91
tion does not lose it ordinarily by subsequent event	S	fs1	4 N 13
Meaning of	•••		
Wrong Court	nting applic	2.	
(a) Time during which applicant has been prosection to set aside sale, whether can be excluded.	d from Itmit	g	- 27 17
tion for applicati	-	A 16	6 N 17
(b) Time occupied in			
excluded from p	. :	' A 1	59 N 9
Court under Civil Procedure Code	•		

Court—Wrong Court—(Contd.)	
(c) Time spent in proceeding, whether excluded in computing	
period of limitation for application to file arbitration award	A 178 N 5
(d) Time, whether excluded on ground of prosecuting in wrong Court application for setting aside ex parts decree	A 164 N 10
Court-fee	
- Deficiency in - Document through mistake or inadvertence	
received, filed and used in office—Deficiency subsequently made up at direction of Court—Effect of	A 173 N 6
up at direction of Court—Effect of	A 1/3 N t
period of limitation—Effect of—Limitation	A 173 N 6
-Payment of	
(a) Limitation for—Extension of time	A 170 N 6
(b) Whether enables party to apply for review beyond period of	1 150 17 0
Recovery of - Right of Government to recover court-fees under	A 173 N 6
S 309, Civil P. C., 1859—Whother subject to limitation	A 149 N 3
- Recovery of, from party-Application by Government-Limitation:	A 182 N 3
Court-fees Act	
—Whether affects provisions of Limitation Act	A 173 N 6
Court of Wards	
Alienation by	
***	A 91 N 13 A 91 N 13
cknowledgment or pay-	A 91 N 13
ment so as to save limitation is statutory and not as guardian :	S 21 N 5
-Bombay Court of Wards Act, S. 16-Offer of Collector under-	
Whether can be used as acknowledgment of hability	S 19 N 72
— Court of Wards taking charge of estate—Government, if becomes trustee for rightful owners	S 10 N 9
	B 10 N 9
on behalf of ward	S 19 N 50
-Notice to creditor of estate stating that debt was due to him and	2 20 21 00
requiring him to appear before Collector when he would be ques-	
tioned about debt — Whether constitutes acknowledgment of	S 19 N 18
Plaintiff being disqualified proprietor under Bengal Court of Wards	P 19 W 19
Act, 1879—Whether ground for extending limitation for suit for	
possession by him	S9N6
— United Provinces Court of Wards Act, S. 51—Suit instituted against ward outside United Provinces—Period of notice under	
S. 54, if can be deducted	S 15 N 23
Greditor	0 10 10 10
—Creditor of ancestor or testator—Suit by, against purchaser from	
devisee or heir, for declaration that such alienation is void and	
for consequential relief—Limitation	A 120 N 44
—Suit by, against surety—Limitation	A 83 N 10
Transfer in fraud of-Setting aside-Soit for-Limitation	A 120 N 23
Criminal complaint	
	8 18 N 3

Criminal Procedure Code (5 of 1898)				
Appeal against rejection of claim	under S. 44	3-Limi	tation:	A 150-A A 150-A N
- Appeal against sentence of death pr	used by Co	nrt of Se		
Provision for—Limitation	assect by Co	are or bo	A 150	; A 150 N
	T	7		A 156 N 2
Appeal from order of acquittal	Provision 10	or—	A 157	; A 157 N
			A 101	, A tol I
Appeal to Court other than High Cou	ırt			4 1 E 2 NT
(a) Limitation	•••	•••	A 104	; A 154 N
(h) Provision for such appeal		. ::		A 154 N
(c) Where appeal is preferred by a	ppellant in	jail—Lım	itation	A 154 N
-Starting point	•••	•••	•••	A 104 M
Appeal to High Court				A 155 N
(a) Applicability of Arts. 150, 155	and 157	•••	•••	A 155 N
(h) Limitation	***	***	•••	
Appeal under Applicability of Arte.	150, 154 and	3 157		A 154 N
Application under-Limitation		·		A 181 N 2
-Order under, respecting possession of	immorabla r	roports		
(a) Jurisdiction to pass such order	100 Period	roberry		A 47 N 5
(b) Suit for recovery of property			•••	
(i) Art. 47, Lim. Act, and Be	ngal Tenanc	v Act		A 47 N 8
(ii) Art. 47, Limitation Act,				
Applicability of			•••	A 47 N 8
(iii) By person bound by such	orderLim	itation	•••	A 47
(iv) By rightful owner to reco	ver property	attached	under	
S. 146, Criminal P. C	Limitation			A 47 N 7
(v) Date of final order - "Fi	nal order."	what is.	under	
Section 145, Criminal P.	C.	***	•••	A 47 N 9
(vi) Defendant not party to sn	it in which o	rder was	passed	. (# NT 9a
—Effect of				A 47 N 3a A 47 N 3
(vii) Essentials of applicability	of Art. 47	•••	•••	A 47 N 9
(viii) Limitation—Starting poin	ıt	•••	•••	ATIMO
(ix) Person not bound by orde	r, whether i	nust bring	such	A 47 N 3
suit Within limitation pre	escribed by A	rt. 47	•••	A gi zi
(x) Person's right to propert	y, whether o	xtinguisbe	d ny	
virtue of Sec. 28 by bis		hring suct	gult	A 47 N 10
within three years under	Art. 47		47.	A 47 N 3
(xi) Plaintiff, when can bring	such suit w	ithin Art.	111	
(xii) Plaintiff, whether must b	ave existing	right to s	4 47·	A 47 N 2
ejectment on date of orde	r tor applicat	omity of A	0 211	A 47 N 7
(xiii) "Recovery of property"—	Meaning of	line Age	9. 9.	
(xiv) Such suit and suit under	r specing we	Her Ace,		A 47 N 2
distinguished (xv) Such suit by person clair	mind under	one houn	d by	17.4
order—When maintainab	la dece	020 2		A 47 N 4
(xvi) Such suit is essentially one		t	•••	A 47 N 1
(xvii) Suit for declaration of righ	t to property	_Limitat	ion:	A 47 N 7 A 15 N 1
-S. 88 (6-D) Proviso, Criminal P. CS	uit underL	imitation	•••	A 10 11 -
S. 145				
(a) Order under				
(i) Neither dispossessing plain	tiff nor main	ntaining d	efon-	
dant to the exclusion of pl	aintiff—Orde	er, whether	0110	A 47 N 5
respecting possession	***	•••	•••	

inal Pro. Code—Section 145—Orde					
 Respecting trust property 		eo — Whet	her		
binding on succeeding tru		·	•••	A 47 N	
(111) Revision by High Court, v	shether allow	ed	•••	A 47 I A 47 I	
(iv) What is (v) When "final order" within		A-+ 47	•••	A 47 N	
(vi) Whether hinds any perso	n other then	actnol nor	tion	T II I	
to the proceedings	n other than			A 47 1	13
S. 146-Order under-Whether one	e respecting	possession	of		
immovable property within Art 47	'		•••	A 47 N	N 5
S. 147-Order under-Whether one	respecting po	ssession of	im-		
movable property within Art. 47	•••	•••	•••	A 47 1	15
S 443				150-A N	T 0
(a) Provision of (b) Rejection of claim under—Appe	al against T	imitation	A	100-A I	N Z
(b) Rejection of claim under—Appea	ar against—L	A 150	1.A: A	150-A N	13
S, 449-Application for leave to appear	d noder—Lie			A 155 N	
S. 449, sub-s. 1, Cl (c)—Order of Si					
Appeal from, to Division Bench of H	igh Court—I	imitation		A 155 N	13
S. 476					
(a) Order of Civil Court—Appeal fro			•••	A 155 1	12
(b) Order passed by Single Judge of		-Appeal fr			
to Division Bench—Whether I		•••	•••	A 155 N	13
(c) Order under—Appeal from—Lir	nitation—Sta	rting point			
0 470 1 0 1 1 1 1 1 1				A 155 M	4.5
-S. 476-A—Order under—Appeal fro	om — Limita	tion — Star	ang	A 154 N	T O
S. 520—Application under—Whether	enhicat to Li	mitation A		A 154 P	
-S. 522—Order under	sunject to Di	miestion A		17 10 1	
(a) Suit for possession by person	n bound hy	such order	_		
Limitation	•••	•••	•••	A 47 M	
(h) When binding on a person	•••	•••	•••	A 47 I	7.3
ninal proceedings		`			
-How far governed by Act	•••	•••	Pre	amble N	32
ps					
-Growing crops					
(a) Suit for-Whether one for price	of goods sold	and delivere	d	A 55 1	
(b) Suit for price—Limitation—Sta	rting point		•	A 55 l	N 1
(c) Suit for price where no fixed upon—Limitation	period of c	redit is ag	eca	٠,	55
(d) Whether immovable property	•••	•••		A 55 N	
wn	•••	•••	•••	11 00 1	• •
-Adverse possession by or against—See	Adverse nes	nesion			
-Crown as such is not entitled to any			,	S 3 1	13
-Easement against Crown	mompaton no		••••		, 0
(a) Property must be in ownership	of Crown and	need not b	e in		
its possession	•••	•••		S 26 N	
(b) Sixty years' user necessary		 -	•••	S 26 N	16, 2
-Lasement right claimed over property					4
ment is acquired by open enjoyment	without inte	rruption for	60		
years	•••	•••	A 149;	5	A
-Suit by-Limitation	•••	•••	1133		

Custom

Custom	
EasementCustom, if can override positive provisions of the Act:	S 26 N 21 S 3 N 24
Damages	
Act of defendant itself constituting legal mjury-Fact that plain- tiff suffers damage subsequently-Whother entitles him to fresh	
cause of action	S 9 N 9
For breach of trust in management of trust property-Suit for	A 120 N 4
- Relief for possession under sale deed—Relief for damages or for return of purchaso money is different	S 14 N 19
-Suit for-See also under Compensation	2
(a) Against Collector for refusing to make award for compensa- tion on acquisition of land—Limitation	A 120 N 9
(b) Against person not tenant of plaintiff for use and occupation —Whether suit for rent (c) Against trustee for loss sustained by trust on account of	A 110 N 2
trustee'e omission to collect moneys due to trust—Limita-	A 120 N 4
(d) Against vender of property who has undertaken to pay the mortgages of the vender but fails to pay the same with result that vender is dammified—Limitation	A 120 N 51
(c) For breach of covenant of title — Suit not falling under Art. 116—Limitation (f) For damages to personal property—Limitation	A 120 N 51 A 109 N 13
(g) For enticement of plaintiff's wife—Limitation (h) For trespase made under mistake—Limitation	A 120 N 51 A 96 N 2
(1) Limitation—Cases governed by residuary Art. 120 (1) Suit for amount contracted by lessee to be paid to lessor's	A 120 N 51
euperior holder—Whetber one for damages for use and occupation (k) Suit for interest as damages for money due—Limitation	A 110 N 2 A 120 N 51
(1) Use by defendant of plaintiff's land for non-agricultural pur- poses without permission—Plaintiff forced to pay fine to	
Government in consequence—Suit by plaintiff for recovery of amount of fine from defendant—Limitation	A 120 N 51
(m) Whether can be treated as one for monoy paid upon existing consideration which afterwards fails	h 97 N 2
Damdupat —Limitation Act, if affects rule	eamble N 33
Death	
Louis for ablicat from decree th refer telitesenteness	A 156 N 10), A 150 N 2
Debt	
— Attached under Civil P. C., O. 21, R 46—Claim in respect of— Whether lies — Contractual debt—Suit for recovery by purchaser of debt due by	A 11 N 10 A 115 N 3
one party to another under contract-Limitation	

Debt_(Contd.)	
— Father's debt—Prous obligation of Hiodu soo to pay—Enforce- ment of—Surt for—Maintainability—Limitation—Starting point: —Joint family debt—Partition of poot family—Collection and fraudulent appropriation of debt by ooe member—Suit for share	A 120 N 49
by another—Whether one for relief on ground of fraud ——Servant's wages as debt—Suit upoo—Limitatiou	A 95 N 4 A 7 N 2
—Time-barred debt.—Fromse to pay—Suit nn contract embodying such promise—Limitation Whether forfeiture	A 115 N 3 A 6 N 2
	A 29 N 5
Whether penalty	A 6 N 2
Debt or liquidated demand	
(b) Suit under Civil P. C., S. 128 (2) (1)—Limitation	A 5; A 5 N 2 A 5; A 5 N 2
Debtor	
——Principal debtor—Suit against, by surety—Limitation ——Suit against—For personal recovery of loan—Limitation: A 57 N 4	A 81 1: A 120 N 41
Dehtur and creditor	
Agreement in writing undertaking to pay time-barred debt—Whether valid and binding Creditor's right against principal debtor is barred—Rights of	S 3 N 14
Surety Death if creditor on day wheo debt becomes due—Starting point	A 81 N 4
of limitation, if postponed	S 17 N 5
——Debtor calling for accounts in reply to demand of creditor for payment—Debtor, if impliedly admits existence of unsettled accounts: —Debtor, it trustee for creditor	S 19 N 19 S 10 N 11
—Debtor owing several debts to creditor—Creditor can adjust payment towards any of the debts though suit for recovery of the debt may be time-barred	S 3 N 14
- Debtor paying to creditor after expiry of limitation for suit for	
recovery of debt.—Debtor cannot elaim back amount Fusion of interests of (a) Subsequent separation of the two interests—Person on	S 3 N 14
whom interest of creditor devolves, whether gets fresh	
cause of action from date of such separation (b) Whether amounts to satisfaction of cause of action	S 9 N 12 S 9 N 12
Joint creditor—Capacity to receive payment of debt and give dis-	,501(12
charge on behalf of all	S 7 N 22
•	S 19 N 18
ereditor against such third person for recovery—Limitation —Payment by debtor without specification, whether to be appro-	A 62 N 31
priated for interest or for principal—Right of creditor to appro- priate for either at his option	S 20 N 5
Relationship of	A 59 N 3

Debtor and creditor—(Contd.)	
- Suit by creditor on hatchitta document stamped and signed by	
debtor containing statement of adjustment of accounts and con-	
	A 115 N 3
	AHONO
Deccan Agriculturists' Relief Act	
——S. 48—Suit or application under—Limitation	A 132 N 2
Decision	
Decision of Civil Court in proceeding other than suit-Suit for set-	
	A 13
——Decision of Settlement Officer—Suit for setting aside—Limitation	A 120 N 31
-Starting point	A 120 N 31
-Starting point	A 14 N 2
—Of Civil Court	
(a) Suit for relief which plaintiff can seek without setting aside	
decision-Limitation applicable, whether same as applicable	
to suit for setting aside decision of Civil Court	A 13 N I
(b) Suit for setting aside—Limitation—Starting point	A 13 N 4
	A 13 N 1
Declaration	S 14 N 19
Relief of declaration is different from relief of possession	D 14 1/ 12
Suit by co.sharer to declare that alienation by lambardar is not	A 91 N 7
binding on bim—Limitation	V Alm
Suit by legatee to declare that alienation by executor is not	
binding on bim-Limitation	A 91 N 13
- Suit by member not party to alienation to declare that alienation by	
a member of joint Handu family is not binding on bim-Limitation:	A 91 N 6
-Suit by member of tarwad to declare that alienation by karnavan	
of Malabar tarwad is not binding on bim-Limitation	A 91 N 8
-Suit by third party against decree holder for declaration that	
decree is invalid—Suit decreed in first Court but dismissed on	
appeal—Period of snit cannot be excluded for application to	
	S 15 N 11
execute decree	
for The second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second s	
(a) By reversioner to declare that alienation by limited female	
owner is void except for her life time - Suit during life.	A 141 N 13
(b) By third party that document is not hinding on him-Limi-	A 91 N 3
tation	A Dr -
(c) Declaration of invalidity of document and to cancel it-	A 91 N 3
Limitation	A 47 N 7
(d) Declaration of right to property—Limitation	A ar a.
(e) Relief involving negativing decree nhtained by defendant-	A 95 N 6
	A 50 11
Limitation applicable	
(f) Watercourse, right to—Suit for declaring such right—Limi-	1 00 N 9
(f) Waterconrse, right to—Suit for declaring such right—Limitation	A 38 N 3
(f) Watercourse, right to—Suit for declaring such right—Limi-	A 38 N 2 S 28 N 3
(f) Watercourse, right to—Suit for declaring such right—Limitation	S 28 N 3
(f) Waterconrse, right to—Suit for declaring such right—Limitation	A 38 N 2 S 28 N 3 A 91 N 2
(f) Waterconrse, right to—Suit for declaring such right—Limitation	S 28 N 3
(f) Waterconrse, right to—Suit for declaring such right—Limitation (g) Whether suit for possessim within S. 28 —Suit to declare that document is unt binding on particular person—Limitation Declaratory suif	S 28 N 3
(f) Watercourse, right to—Suit for declaring such right—Limitation (g) Whether suit for possessinn within S. 28 Limitation beclaratory suit —Applicability of S. 23 to declaratory suits based nn a continuing	S 28 N 3
(f) Waterconse, right to—Suit for declaring such right—Limitation	S 28 N 3
(f) Watercourse, right to—Suit for declaring such right—Limitation (g) Whether suit for possessinn within S. 28 Limitation beclaratory suit —Applicability of S. 23 to declaratory suits based nn a continuing	S 28 N 3

Ž1

**	
cree_(Contd.)	
-Against benamidar, obtained collusively and fraudulently-Real	
owner, whether bound to suo to sot aside decree within period	
applicable to suits for setting aside decrees on ground of fraud	
Against Hindn father — Non-satisfaction of decree—Subsequent	22 00 11 0
suit to enforce pious obligation of Hindu son to pay his father's	
debt-Maintainability	
-Against Hindu widow, obtained fraudulently	A 120 N 49
(a) Suit by reversioner for declaration that decree is not binding	
on reversion—Limitation—Starting point	
(b) Whether binding on reversionary heirs	
	21 121 11 10
-Against several persons	
(a) Decree passed against several persons as legal representa-	
tives of deceased person is passed against them jointly and	1 100 N 100
	A 182 N 138
(b) Joint decree	
(1) Decree against manager of Hindu joint family carrying	
on business is one passed against several persons jointly	1 100 17 100
within Expl I, Art 182	A 182 N 138
(ii) Decree for sale against all defendants — Decree against	
one set aside - Suit against that defendant subse-	
quently decreed—Second order absolute—Two orders	1 100 17 100
operate as one decree	A 182 N 138
(in) Decree passed jointly against A & B-Fact that decree	
provides that it should be first executed against A does	
not make it other than joint decree against both	A 182 N 138
(iv) Fact that joint decree differentiates between several	
judgment debtors regarding mode of execution does	
uot affect its character as joint decree	A 182 N 138
(v) Fact that subsequent to passing of joint decree liability	
of one is limited by adjustment with decree-bolder	1 100 37 100
	A 182 N 138
(vi) Mortgage decree not apportuning mortgage debt among	
different items of property mortgaged—It is joint	
decree passed against mortgagor and subsequent mort-	1 100 17 100
	A 182 N 138
(vii) Simply mentiouing name of other judgment debtor	A 182 N 138
does not make decree one against both (viii) Suit for sale ou mortgage—One of properties previously	A 102 N 136
sold for arrears of revenue — Decree passed for reali-	
zation of amount by sale of other properties and out	
of certain amount in hands of one of defendants as	
surplus proceeds of revenue sale—Decree is one passed	
jointly against all defendants	A 182 N 138
Amendment of	11 102 11 100
(a) And novation of decree—Distinction between	A 156 N 8
(b) And substitution of decree—Distinction between	
(c) Application for—Limitation	
(d) Duty of—On whom lies	A 181 N 19
(a) Effect of	A 152 N 4
(f) Whether gives fresh starting point for application to High	
Court under Civil Procedure Code	A 156 N 8
(g) Whether sufficient ground for excuse of delay within S. 5,	
Limitation Act, for appeal from such decree	A 156 N 8

Decree — (Contd.)		
Appeal from _ Limitation _ S	tarting point-Where	review of
judgment is granted		A 152 N 5
Appeal from, to High Court-See	under High Court	
Appellate decreeAppellate decree-		plication
for setting aside by respondent-		A 164 N 2
-Cause of action furnished by d	ecree — Appeal — Dismis	sal of, if
causes revival of right so as to	furnish fresh period of l	mitation S9N11
Charge created by, upon immov	able property - Enforce	ement of
-Suit for-Limitation		A 132 N 5
Compromise decree		
(a) Suit for enforcement, who	other one for breach of	contract
hetween parties or for br	each of terms imposed t	A 115 N 19
of Court (b) Suit on hasis of—Suit for a	oanunta —T imitation	A 120 N 15
(c) Whether like contract can		de other
than fraud	. 20 200 40140 011 51022	A 95 N 6
Copy of-Time occupied in obtain	ning-Whether excluded	in com-
puting period of limitation for	appeal from decree of Hi	igh Court A 151 N 3
on Original Side	•••	A 156 N 5
Date of		A 182 N 25
(a) Meaning of		A 162 N 20
(b) What 19 A 151 N 3,	A 152 N 3, A 162 N 6;	A 173 N 5; A 174 N 6; A 175 N 5, A 179 N 3
		A 110 K 0, 11 11-
- Decree absolute in suit for divor	o made on Original Side	of High A 151 N 2
Court—Appeal against—Limital ——Decree subsequently set aside—		
Profits received during such poss		
profits wrongfully received	*** ***	r suit for A 109 N 8
Enforcement of	*** ***	
(a) Against defendant—Plea of	frand in defence, withou	t having
sued to set aside decree lo		A 90 M 20
(b) And execution of decree dis	tanguished	A 183 N 4
(c) Application for-What is	•••	A 183 N 4
(d) Meaning of		A 183 N 4
-Execution of , See also under Ex	ecution.	17 9
(a) Application for-Limitation	ı	A 181 N 3
(b) Application not filed within	time_Effect of	
(1) Decree cannot be revi	ved by subsequent procee	dings by
decree-holder, thoug	h bona fide or permitted	
by inadvertence or i	h bona fide or permitted of opposed by judgment.	A 182 N 146
(11) Decree rendered inop	erative and unenforceable	
(m) No Court can he cal		on such A 182 N 146
dccrco even under i (c) Movcable property wrongly		0. 11. 1
-Limitation	sold in-recovery or-	A 120 N 2
(d) Property purchased by dec	ree-holder, judgment deb	tor hav-
ing no saleable interest i	n property sold - Decree	e holder.
whether can again apply	for execution of decree	without A 166 N 8
setting aside prior sale	•••	•••

Decree-Execution of-(Contd.)		
(e) Property sold belonging to other than judgment-debtor but		
who is party to suit — Application by such person for relief		
in respect of such sale—Application under S. 47, Civil P. C.		
-Limitation	A 166	
(f) Sale in—Suit for—When maintainable	A 12	N O
Ex parte decree		
(a) Setting aside		
(1) Right of —Provision for	A 164	N 2
(n) Whether can be set aside by legal representative of		
defendant	A 164	N 4
(b) Setting aside, application for		
(1) Application by legal representative - Limitation -		
Starting point-Where original defendant had been		
duly served with summons	A 164	N 7
(11) Application by legal representative of deceased defon-		
dant-Lamitation	A 164	N 4
(iii) Application dismissed for default — Subsequent appli-		
cation to restore prior application — Limitation for	A 191 N	115
subsequent application A 164 N 15, (1v) Application filed on Original Side of High Court—	W TOT I	1 10
	A 164	N 2
(v) Application for setting aside decree in proceeding other		
than suit—Limitation	A 164	N 2
(vi) Application for setting aside ex parte decree in case		
where proceeding under Succession Act is to take		
form of suit and order passed is to be enforced as		
decree-Limitation	A 164	N 2
(de) frança contribu po comaniz = L zavez es,	A 169	N 2
1	1 104	
ex parte decree	A 164	N 2
(ix) Application within time consigned to record room		
owing to notice—S		
set aside		
maintainable	A 164 N	15
(x) Article 164 and S. 18, Limitation Act - Limitation	A 164 N	
(xi) Death of defendant after making application — Legal		
representative, whether can continue application		
made by deceased defendant	A 164	N 4
(xii) Decree under Provincial Small Cause Courts Act-		
Security or deposit requisite for such application—		
Provisions as to — Validity of application without security or deposit	A 164	N S
(xiii) Decree under Provincial Small Cause Courts Act-	** 101	., 0
Whether Court can extend time for providing security		
or deposit	A 164	N 3
() To make a fine 164	A 164	
	1: A 164	
(vri) Necessary parties	A 164 N	
(vii) Onus of proof—Where application is made more than		
30 days from date of decree	A 164 N	14

Decree -Ex parte decree - Setting aside, application for - (Contd.)

Decree—Lix parte decree—Betting aside, application for—(Conta.)	
(xviii) Where summons was not duly served when applicant	
has knowledge of decree—'Knowledge of decree' what	
constitutes—Limitation—Starting point	A 164 N 8
(xix) Whether Court can extend time under inherent	
powers	A 164 N 9
(xx) Whether time can be extended under S 5, Lim. Act	A 164 N 9
(xxi) Whether time can be extended under S 6, Lim, Act	A 164 N 9
(xxii) Whether time during which applicant has been pro-	·
secuting another civil proceeding in wrong Court can	
	A 164 N 10
(xxni) Who can apply to set aside decree within Art. 164	A 164 N 2
1.7 C 11.	
· was not	
of decree	
, ucoreo	A 164 N 6
(ii) On ground of decree having been obtained by fraud-	
Suit, whether hes after failure of prior application to	
set aside decree	A 95 N 19
(11) O 7 66 7 71 11 11	A 164 N 2
(iv) Suit and decree, whether must be under Civil P. C.,	
	A 164 N 2
for applicability of Art. 164	
Final decree in mortgage suit-Application for	
(a) In respect of compromise decree, where such decree contem-	A 181 N 4
plates passing of final decree—Limitation	A 101 1
(h) Limitation — Where mortgage suit is on Original Side of	A 181 N 4
Chartered High Court	W 101 1
(c) Under Civil P. C., O. 34, Rr. 3 and 5	
(i) Application adjourned at the request of defendant or	
not judicially disposed of - Second application out of	A 181 N 4
time, if maintainable	A 101 1
(ii) Application disposed of or dismissed for default or non-	
prosecution — Second application out of time, if	A 181 N 4
barred	A 181 N 4
(m) Limitation—Starting point	A LOL D
(a) Where decree in suit for sale is against separate	
sets of defendants and one set of defendants	
appeals from decree so far as decree against	A 181 N 4
liminary decree:	A 181 N 4
(iv) T ₁ · pendency of pro-	
ceedings to set aside preliminary decree passed ex	
parte	A 181 N 4
(v) Time, whether excluded on ground of proceedings in	
	A 181 N 4
Died de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la company de la compa	A 181 N 16
-Final decree in partnership snit-Application for-Limitation	A 161 N 16
and a series in parentrally ante-riplancation for Billians	
-Final decree in redemption suit - Application for, under Civil	A 181 N 5
P. C. O. 34, R. 8 — Limitation	1 117 8 2
—Fireign decree—Application for execution—Limitation —For future maintenance—Whether can be passed Λ 12	9 A 120 N 6
-For future mesne profits-Period from date of decree for which	A 109 N 11
such profits can be given	

Decree —(Contd)			
For pre-emption-Effect of			. A 10 N 2
-In favour of several persons-Decree in p	artition su	it. in favour o	if
two Hindu minor brothers and anothe	r brother	acting as nex	t
friend declaring rights of three to redee	m certain	property-No	ŧ
one passed severally	••		. A 182 N 137
-In pre-emption suit-Whether can be en	forced agai	nst transferee	s
of vendees who were not impleaded as	parties t	o suit agains	t
vendees			A 10 N 14
- Judgment debtor paying certain sums in			
		satisfaction-	
	-debtor fe	or recovery o	
(T. 1			A 62 N 31
'Jndgment' in Letters Patent, whether eq	uivalent to		1 1 2 2 37 0
Knowledge of-Meaning of, within Art. I	 ies	••• ••	A 104 NO
—Meaning of	·ux	•••	A TOT NO
			•
(a) Order baving force of decree in proc whether decree within Art. 164			1 101 17 0
(b) Within Art, 156		•••	1
2.7	-	•••	
(c) Withio Art. 164		•••	
Modified after saleEffect of, on auction		•••	A 12 N 6
- Mooey paid under-Suit for-Maiotainah		•••	
-Money wroogly attached under-Money r			
—Suit by real oweer against the decree- Limitation	bolder for		
——Non-execution of — Agreement as to, be Recording of such agreement—Application			
—Obtained by fraud—Setting aside—Suit			
-Starting point	пу вперат	t-Dimitation	A 95 N 13
Of Chartered High Court—Sec under High	h Coort		,
- Of Court of Small Causes-Suit opoo, wh		tainable: A 1	99 N 1 T N 9
Of High Court_Appeal from decree in e			22 M 1, F M 0
diction—Limitation—Starting point	DYOUGHS OF	original lutia-	A 151 N 3
Of Original Side of High Court-Revivor	of_Evol I	Art 189 hos	
nothing to do with question whether sa			
judgment debtor is operative against other	er joint jud	ment debtors	A 182 N 138
Of Privy Council			
(i) Against father—Execution of-	-Application	on for, against	
sons—Limitation			A 183 N 4
(ii) Against party after his deat	h-Bringin	g legal repre-	
sentative on record—Applica	tion for—I	imitation	A 181 N 13
Of Revenue Court _ Appeal against, t	o District	Court under	
Agra Tenancy Act—Limitation			A 152 N 2
On award-Decree passed before expiry n	f ten days-	-Validity of :	A 158 N 6
Order amounting to-Ex parts orders-S	etting aside	Right of	
Provision for			A 164 N 2
Payable by instalmentsExecution of	-Applicatio		1 85 37 -
tation			A 75 N 3

Decree __(Contd.)

Payment by instalments	
(a) Application entertained by Court after expiry of limitation	
-Order passed on application-Effect of	A 176 N 3
(h) Application for postponement of payment of decree-Limi-	
tation	A 175 N 3
(c) Application in respect of decree for sale on a mortgage-	
Limitation	A 175 N 4
Payment by instalments, application for	
(a) Court, whether can extend time	A 175 N 3
(b) Date of decree—What is	A 175 N 5
) i = 1	· A 175 N 5
(c) Limitation—Starting point A 170; A 170 N 2	A 175 N 2
(d) Provision for such application	A 175 N 2
Payment of Postponement of, application for Limitation	ATION
Personal decree	
(a) Application for-Under Civil P. C., O. 34, R. 6-Limitation	
(a) Starting point A 116 N 19, A 116 N 20	; A 181 N b
(11) Where appeal is preferred against order confirming sale	
after dismissing application to set aside sale and such	
minds distillusing abluncation to des traine and and and	A 181 N 6
(iii) y Chartered High	
(iii) y Chartesta 25-6-	A 181 N 8
(b) Claim for-Claim in suit by vendor to recover balance of	
-Limitation	A 116 N 23
(c) Decree under Civil P.C., O. 34, R. 6-Whether can be	
passed with regard to interest accrued eix years before suit	
even if claim for personal relief with regard to principal is	A 118 N 20
(d) Suit against sons of deceased mortgagor against his assets in	
their hands where mortgage is not binding on sons but con-	
tains indemnity clause—Whether lies—Limitation—Start-	A 116 N 20
(e) Suit for personal decree against mortgagor for loss or dimi-	A 120 N 53
(f) Suit for personal decree in respect of money due under mort-	A 132 N 18
(g) Suit under T. P. Act, S. 68, on basis of mortgage deed—Limi-	A 116 N 20
Person bound byWhether can seek refief negatived by decree.	A 95 N 6
without setting it aside	
-Person not party to	A 120 N 23
	A 120 N 23
	1
Pre-decree compromiseDeclaratory snit on ground ofSuit for	
declaration that decree-holder is barred from executing decree—	A 120 N 31
Limitation	
Preliminary decree-Application to obtain execution under-Relief	S 14 N 19
is not same as for subsequent application for final decree in suit:	A 12 N 0
	A 62 N 18
Roversed afterwards-Money paid under-Snit for-Limitation	A Oa II Ja
-Review of Effect of Whether gives fresh starting point for	A 156 N 9
appeal from decree	V 190 14 0

. (0 12)					-
Decree—(Contd.)					
Revision of					
(a) Application for—Ap of award—Limitat		reviso deci	eo passen or	1 Dasis	A 158 N 2
(b) What constitutes	100				A 183 N 10
—Set aside after sale—Effe			 .h.n		A 12 N 6
				TI:db	A 12 N 6
——Set aside by trial Court Court—Appeal from suc	h decree to	High Conr	t under Civi	P. C.	1 150 27
-Inmitation-Starting					A 156 N 11
Setting aside-Decree voi must be set aside by part				sistent	
with decree	•••	•••	••	*	A 96 N 6
——Setting aside, suit for					
(a) By mmor—Suit to	set asido	decree bas	ed on comp	romise	
entered into by g		There decre	nvolves to	ansfer	
of property—Limi	tation				A 44 N 4
(b) Decree null and voi		t being prop	erly represen		1 05 17 0
Limitation for sur (c) Decree obtained by	f	J P	_ ,	•••	A 95 N 6
(d) Decree obtained by	frand arai	net ehebart.	_Snit by sne	COPESOT	
of shebait for sett					A 95 N 7
(e) Grounds on which	such sui	t is mainta	mable — Pe	rjured	
evidence baving b	een given,	whether suc	b ground	٠	A 95 N 6
(f) Limitation—Limit					
bound by decree	by framing	snit as one	for possess	ion or	
declaration		··		-· ·:·	A 95 N 6
(g) On ground of decre			d by iraud-	-Limi-	6; A 95 N 12
tation—Starting p					
(h) On ground of fraud		•••	2	1 90 M	0; A 99 M 12
(b) On ground of fraud					
(b) On ground of fraud (i) Burden of pr (ii) Decree again	oof				A 95 N 17
(i) Burden of pr (ii) Decree again Suit by succ	oof st shobart essor-Lin	collusively a	and fraudule	ntly—	
(i) Burden of pr (ii) Decree again Suit by succ (iii) Matters to v	oof st shobart essor-Lin	collusively a	and fraudule	ntly—	A 95 N 17 A 95 N 14
(i) Burden of pr (ii) Decree again Suit by succ (iii) Matters to v suit lie	oof st shobait essor—Lin which fraud	collusively a nitation—St must relate	and fraudule arting point e in order to	ntly— make	A 95 N 17 A 95 N 14 A 95 N 6
(i) Burden of pr (ii) Decree again Suit by succ (iii) Matters to v suit lie (iv) Plea of frand	oof st shobart essor—Lin which fraud	collusively a nitation—St must relate way must be	and fraudule arting point e in order to set forth	ntly— make 	A 95 N 17 A 95 N 14
(i) Burden of pr (ii) Decree again Suit by succ (iii) Matters to v suit lio (iv) Plea of frand (i) On ground of mista	oof st shobait essor—Lin which fraud in what w ke—Suit, w	collusively a nitation—St must relate way must be	and fraudule arting point e in order to set forth	ntly— o make ground	A 95 N 17 A 95 N 14 A 95 N 6 A 95 N 16
(i) Burden of pr (ii) Decree again Suit by succ (iii) Matters to v suit lie (iv) Ples of frand (i) On ground of mista of mistake	oof st shobait essor—Lin which fraud , in what w ke—Sujt, w	collusively a nitation—St must relate way must be	and fraudule arting point e in order to set forth	ntly— make 	A 95 N 17 A 95 N 14 A 95 N 6
(i) Burden of pr (ii) Decree again Suit by succ (iii) Matters to v (iv) Plea of frand (i) On ground of mista of mistake (i) On ground other th	oof st shobait essor—Lin which fraud , in what w ke—Suit, w	collusively a pitation—St must relate must be thether one	and fraudule arting point e in order to set forth for relief on p	ntly— o make ground	A 95 N 17 A 95 N 14 A 95 N 6 A 95 N 16
(i) Burden of pr (ii) Decree again Sunt by succ (iii) Matters to v (iii) Ples of Irand (i) On ground of mista of mistake (i) On ground other it (i) Decree again (ii) Decree voids	oof st shobatt sessor—Lin which fraud in what w ke—Sugt, w man fraud st minor—	collusively a sitation—St must relate must be there one in the collusion with the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion of the collusion	and fraudule arting point e in order to set forth for relief on p	ntly— o make ground	A 95 N 17 A 95 N 14 A 95 N 6 A 95 N 6 A 96 N 2
(i) Burden of pr (ii) Decree again Sunt by suce (iii) Matters to v suit lie (iv) Ples of frand (i) On ground of mista of mistake (j) On ground other th (i) Decree again (ii) Decree said (iii) Limitation	oof st shobatt essor—Lin which fraud , in what v ke—Supt, w an fraud st minor—i ble—Limit	collusively a intation—St must relat ray must be thether one a Limitation ation	and fraudule arting point e in order to set forth for relief on p	ntly— o make ground	A 95 N 17 A 95 N 14 A 95 N 6 A 95 N 16 A 96 N 2 A 120 N 22 A 120 N 22 A 120 N 22
(i) Burden of pr (ii) Decree again Surt by succ (iii) Matters to v suit file (iv) Ples of Irand (i) On ground of mista of mistake (j) On ground other it (i) Decree again (ii) Decree void (iii) Limitation (k) On ground that it:	st shobatt essor—Lin which fraud , in what v ke—Supt, w an fraud st minor—i ble—Limit s voidable,	collusively a pitation—St must relation. Tay must be thether one a continuation ation. whother governor whother governor and the continuation are governor at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the continuation at the co	and fraudule arting point e in order to set forth for relief on the set forth for relief on the set forth for relief on the set forth for relief on the set forth for relief on the set forth for relief on the set forth for relief on the set forth for relief on the set forth forth for relief on the set forth forth for relief on the set forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth	ntly— o make ground t. 95 :	A 95 N 17 A 95 N 14 A 95 N 6 A 95 N 16 A 96 N 2 A 120 N 22 A 120 N 22
(i) Burden of pr (ii) Decree again Sut by suce (iii) Matters to v suit lie (iv) Ples of frand (i) On ground of mista of mistake (i) On ground other ti (i) Decree again (ii) Decree soain (iii) Limitation (k) On ground that iii (i) Suit barred—with	oof st shobart ressor—Lin which fraud , in what v ke—Sur, w han fraud st minor— ble—Limit is voidable, ther bars s	collusively a nitation—St must relat ray must be thether one in the collusion whother gor unt for relic	and fraudule arting point e in order to set forth for relief on the set forth for relief on the set forth for relief on the set forth for relief on the set forth for relief on the set forth for relief on the set forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth fort	ntly— o make ground t. 95: not be	A 95 N 17 A 95 N 14 A 95 N 6 A 95 N 16 A 96 N 2 A 120 N 22 A 120 N 22 A 120 N 23 A 95 N 6
(i) Burden of pr (ii) Decree again Surt by succ (iii) Matters to r auit lie (iv) Plea of frand (i) On ground of mista of mistake (j) On ground other it (i) Decree again (ii) Decree voida (iii) Limitation (k) On ground that it: (i) Suit barred—Whe obtained without	oof st shobart ressor—Lin which fraud , in what v ke—Sur, w han fraud st minor— ble—Limit is voidable, ther bars s	collusively a nitation—St must relat ray must be thether one in the collusion whother gor unt for relic	and fraudule arting point is in order to set forth for relief on proceedings of the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set for the set fo	ntly— o make ground t. 95: not be	A 95 N 17 A 95 N 6 A 95 N 6 A 95 N 16 A 96 N 2 A 120 N 22 A 120 N 22 A 120 N 22 A 120 N 22 A 120 N 22 A 120 N 22
(i) Burden of pr (ii) Decree again Sut by suce (iii) Matters to v suit lie (iv) Ples of frand (i) On ground of mista of mistake (i) On ground other ti (i) Decree again (ii) Decree soain (iii) Limitation (k) On ground that iii (i) Suit barred—with	oof st shobalt sessor—Lin which fraud , in what w ke—Sut, w an fraud st minor— ble—Limit is voidable, ther bars s setting asia	collusively a pitation—St must relation—St way must be thether one street ation ation whother govern the for relic lo decree	and fraudule arting point e in order to set forth for relief on the set forth for relief on the set forth for relief on the set forth for relief on the set forth for relief on the set forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth fo	o make ground t. 95: not be	A 95 N 17 A 95 N 14 A 95 N 6 A 95 N 16 A 96 N 2 A 120 N 22 A 120 N 22 A 95 N 6 A 95 N 6
(i) Burden of pr (ii) Decree again Sut by succ (iii) Matters to v auit lie (iv) Plea of frand (i) On ground of mista of mistake (j) On ground other th (j) Decree again (ii) Decree voida (iii) Limitation (k) On ground that it: (i) Suit barred—Whe obtained without (m) When lies (n) Who can sue	oof st shobart sessor—Lin which fraud , in what v ke—Supt, w an fraud st minor— .ble—Limit s voidable, ther bars s setting asia	collusively a sitation—St must relation—St must relation—st must be shether one sitation ation who ther govern for relic decree	and fraudule arting point is in order to set forth for relief on the set forth for relief on the set forth for relief on the set forth for relief on the set forth for relief on the set forth for relief on the set forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth forth for	ntly— ntly— nake nsground ntly— t. 95: not be	A 95 N 17 A 95 N 14 A 95 N 6 A 95 N 16 A 96 N 2 A 120 N 22 A 120 N 22 A 120 N 22 A 120 N 20 A 120 N 20 A 120 N 20
(i) Burden of pr (ii) Decree again Sut by succ (iii) Matters to v suit flow (iv) Plea of frand (i) On ground of mista of mistake for the (i) On ground of control (ii) Decree again (ii) Decree void ((iii) Limitation (k) On ground that it: (i) Suit barred—Whe obtained without (m) When lies (n) Who can sue —Suit for declaration that tation—Starting point	st shobat st shobat sessor—Lin which fraud in what v ke—Supt, w an fraud an fraud st minor— is voidable, ther bars a setting asia	collusively a sitation—St inust relation—St inust relation at the sitation at	and fraudule arting point to ein order to the set forth for relief on the set forth for relief on the set forth for relief on the set forth for relief on the set forth for plaintiff—	ntly— o make ground t. 95: not beLimi	A 95 N 17 A 95 N 14 A 95 N 6 A 95 N 16 A 96 N 2 A 120 N 22 A 120 N 22 A 95 N 6 A 95 N 6
(i) Burden of pr (ii) Decree again Sut by succ (iii) Matters to v suit lie (iv) Ples of Irand (i) On ground of mista of mistake (i) On ground other it (i) Decree again (ii) Decree again (iii) Decree again (iii) Limitation (ke) On ground that it: (i) Suit barred—Whe obtained without (m) When lies (n) Who can sue —Suit for declaration that tation—Starting point —Suit for relief inconsist	oof st shobat ressor_Lin rehich fraud , in what v ke—Supt, w aan fraud st minor— ble—Limit s voidable, there bars s setting asi t decreo is r ent with de	collusively solutation—St must relat ray must be thether one solutation Limitation ation whother go unt for relic lo decreo cot binding ecreo in fan	and fraudule arting points in order to the forth for relief on present of which can be artiful on plaintiff—our of defenour of	ntly— o make ground t. 95: not beLimi- dant—	A 95 N 17 A 95 N 14 A 95 N 6 A 95 N 16 A 96 N 2 A 120 N 22 A 120 N 22 A 120 N 22 A 95 N 6 A 120 N 22 A 95 N 6
(i) Burden of pr (ii) Decree sgain Sut by suc (iii) Matters to v suit bly suc (iii) Matters to v suit lie (iv) Ples of frand (i) On ground of mista of mistake (i) Decree sgain (ii) Decree sgain (ii) Decree sgain (iii) Limitation (k) On ground that it: (l) Suit harred-who obtained without (m) When lied without (m) When can sue —Suit for declaration that tation—Starting point —Suit for relief inconsists Limitation—Applicabil	oof st shobat ressor—Lin rhich fraud , in what v ke—Sujt, v an fraud st minor— , ble—Limit is voidable, ther bars s setting asi t decreo is r ent with d ity of perice	collusively stitation—St must relat must relat must relat may must be thether one strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of	and fraudule arting point is in order to set forth for relief on a set forth for relief on a set forth for many first the set for the set for plaintiff— on plaintiff— on plaintiff— on to suit for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for se	ntly— o make ground t. 95: not beLimi. dant— setting	A 95 N 17 A 95 N 14 A 95 N 6 A 95 N 16 A 96 N 2 A 120 N 22 A 120 N 22 A 120 N 22 A 120 N 22 A 120 N 22 A 95 N 6 A 120 N 22 A 95 N 6
(i) Burden of pr (ii) Decree sgain Sut by suc (iii) Matters to v suit bly suc (iii) Matters to v suit lie (iv) Ples of frand (i) On ground of mista of mistake (i) Decree sgain (ii) Decree sgain (ii) Decree sgain (iii) Limitation (k) On ground that it: (l) Suit harred-who obtained without (m) When lied without (m) When can sue —Suit for declaration that tation—Starting point —Suit for relief inconsists Limitation—Applicabil	oof st shobat ressor—Lin rhich fraud , in what v ke—Sujt, v an fraud st minor— , ble—Limit is voidable, ther bars s setting asi t decreo is r ent with d ity of perice	collusively stitation—St must relat must relat must relat may must be thether one strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of	and fraudule arting point is in order to set forth for relief on a set forth for relief on a set forth for many first the set for the set for plaintiff— on plaintiff— on plaintiff— on to suit for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for set for se	ntly— o make ground t. 95: not beLimi. dant— setting	A 95 N 17 A 95 N 14 A 95 N 6 A 96 N 16 A 96 N 2 A 120 N 22 A 120 N 22 A 120 N 22 A 95 N 6 A 120 N 25 A 95 N 6
(i) Burden of pr (ii) Decree again Sut by suc (iii) Matters to v suit ble (iv) Ples of frand (i) On ground of mista of mistake (j) On ground other it (i) Decree again (ii) Decree voida (iii) Limitation (k) On ground that it i (i) Suit barred—Whe obtained without (m) When lies (n) Who can sue Suit for declaration that tation—Starting point Suit for relief inconsist Limitation—Applicabil ande decree Suit to set aside decree	oof st shobatt ressor—Lin which fraud in what v ke—Supt, w can fraud st minor— blibe—Limit is voidable, ther bars s setting asi decreo is t decreo is t ent with de ity of peric obtained b	collusively stitation—St must relat must relat must relat may must be thether one strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of	and fraudules arting points in order to set forth for relief on p	ntly— o make ground t. 95: not beLimi. dant— setting aracter	A 95 N 17 A 95 N 14 A 95 N 16 A 95 N 16 A 96 N 2 A 120 N 22 A 120 N 22 A 120 N 22 A 120 N 22 A 95 N 6 A 120 N 22 A 95 N 6 A 120 N 22 A 95 N 6
(i) Burden of pr (ii) Decree sgain Sut by suc (iii) Matters to v suit bly suc (iii) Matters to v suit lie (iv) Ples of frand (i) On ground of mista of mistake (i) Decree sgain (ii) Decree sgain (ii) Decree sgain (iii) Limitation (k) On ground that it: (l) Suit harred-who obtained without (m) When lied without (m) When can sue —Suit for declaration that tation—Starting point —Suit for relief inconsists Limitation—Applicabil	oof st shobatt ressor—Lin which fraud in what v ke—Supt, w can fraud st minor— blibe—Limit is voidable, ther bars s setting asi decreo is t decreo is t ent with de ity of peric obtained b	collusively stitation—St must relat must relat must relat may must be thether one strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of	and fraudules arting points in order to set forth for relief on p	ntly— o make ground t. 95: not beLimi. dant— setting aracter	A 95 N 17 A 95 N 14 A 95 N 16 A 95 N 16 A 96 N 2 A 120 N 22 A 120 N 22 A 120 N 22 A 120 N 22 A 95 N 6 A 120 N 22 A 95 N 6
(i) Burden of pr (ii) Decree again Sut by suc (iii) Matters to v suit ble (iv) Ples of frand (i) On ground of mista of mistake (j) On ground other it (i) Decree again (ii) Decree voida (iii) Limitation (k) On ground that it i (i) Suit barred—Whe obtained without (m) When lies (n) Who can sue Suit for declaration that tation—Starting point Suit for relief inconsist Limitation—Applicabil ande decree Suit to set aside decree	oof st shobatt ressor—Lin which fraud in what v ke—Supt, w can fraud st minor— blibe—Limit is voidable, ther bars s setting asi decreo is t decreo is t ent with de ity of peric obtained b	collusively stitation—St must relat must relat must relat may must be thether one strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of the strength of	and fraudules arting points in order to set forth for relief on p	ntly— o make ground t. 95: not beLimi. dant— setting aracter	A 95 N 17 A 95 N 14 A 95 N 16 A 95 N 16 A 96 N 2 A 120 N 22 A 120 N 22 A 120 N 22 A 120 N 22 A 95 N 6 A 120 N 22 A 95 N 6 A 120 N 22 A 95 N 6

	se ot						
(a)	Addition of le						
	limitation—	-Delay.	if can be	excused	on sufficien	t cause	
	being shown	n -	•••	***		***	S 23 N 12
(1)	Admission w		foromen to	- aufficient	acuse for d	alon If	
(17)	without jur			Buncien	Cause for th	C10.5 —21.	5 N 2 F N 4
				•••	•••		011 21 21 2
(c)	Appeal again	st dead	person	Appeal fil	led under b	ona fide	
	mistake—T	ime expi	ring befor	e bringing	representat	ives on	~ 10
	record—Tit	ne, if car	be exten	ded		•••	S 5 N 47
(a)	Appeal on be	half of d	ead nerso	a Amilica	tion by legs	l repre-	
(0)	sentatives t						S 5 N 47
(e)	Appeal to wr						
	tion expirir		mistake	discovered	_Time, if		S5N8
	extended		•••	•••	***	***	2010
(f)	Applications	and appe	eals under	S. 78. Pr	ovincial Ins	olvency	
۱-,	Act					•••	S 5 N 4
(.)	Application f	-			•••		
(g)	Application	otion mea			- at mation	to are.	
	(1) Appres	ation pre	sented an	er rejectio	n of motion	to pre-	S5N40
			Iamtaina		•••	•••	S 5 N 43
	(11) Expres	s prayer	for condo	nation of d	elay, il nece	ssary	501120
	(iii) Formal	applicat	ion, if no	cessarv			S 5 N 43
	(1v) Valuat			•	•	***	S 5 N 42
			••• _		•••	•••	S5N4
(h)	Application 1	inder Bu	rms Cour	ts Act	***	•••	S5N4
(1)	Application u	inder Ma	rtial Law	Ordinance	1 of 1922	•••	NSFN1
7.1							
w	Application i	inder U.	9, R. 4, C	ivil P. C.		8	NAFNB
(k)	Application t	inder O. inder Pr	9, R. 4, C ovincial I	ivil P. C. asolvency	Act, 1907	s	5 N 4 F N D
(Ķ)	Application t	inder O.	9, R. 4, Covincial I	ivil P. C. isolvency	Act, 1907	s	5N4FN5 S5N4
(Ĕ)	Application t	inder O.	9, R. 4, Covincial I	livil P. C. isolvency	Act, 1907	s	5N4FN6 55N4 5N4FN8
(i)	Application t	inder O.	9, R. 4, Covincial I	livil P. C. nsolvency	Act, 1907	s	5 N 4 F N 8 5 N 4 F N 8 5 N 4 F N 8
(£)	Application t	inder O.	9, R. 4, Covincial I	ivil P. C. isolvency	Act, 1907	s	5 N 4 F N 8 5 N 4 F N 8 5 N 4 F N 8 5 N 4 F N 8
(F)	Application t	inder O.	9, R. 4, Covincial I	ivil P. C.		s	5 N 4 F N 8 5 N 4 F N 8 5 N 4 F N 8
(E)	Application t	inder O.	9, R. 4, Covincial In	ivil P. C.		s	5 N 4 F N 6 5 5 N 4 5 N 4 F N 8 5 N 4 F N 8 5 5 N 4
383	Application t	inder O.	9, R. 4, Covincial I	ivil P. C.		s	5 N 4 F N 4 5 N 4 F N 8 5 N 4 F N 8 5 N 4 F N 4 S 5 N 4
(<u>k</u>)	Application to	ander Pro	ovincial I	nsolvency	ct—Delay,	s	5 N 4 F N 6 5 5 N 4 5 N 4 F N 8 5 N 4 F N 8 5 5 N 4
(k)	Application to be excused Cases arising	under C	ovincial I	nsolvency	·ct—Delay,	s	5 N 4 F N 4 5 N 4 F N 8 5 N 4 F N 8 5 N 4 F N 4 S 5 N 4
(k)	Application to be excused Cases arising Conv of judg	under C	ovincial I	Act	 ct—Delay, 	S	5 N 4 F N 8 5 N 8 5 N 4 F N 8 5 N 4 S 5 N 4 S 5 N 4
(k)	Application to be excused Cases arising Copy of judg (1) Copy o	under C	ovincial I	Act	ct—Delay,	S	5 N 4 F N 4 5 N 4 F N 8 5 N 4 F N 8 5 N 4 F N 4 S 5 N 4
(k)	Application to be excused Cases arising Copy of judg (i) Copy of	under C ment f fisst Cong_If ca	owincial I	Act	ct—Delay,	if can	5 N 4 F N N N N N N N N N N N N N N N N N
(k)	Application to be excused Cases arising Copy of judg (i) Copy of	under C ment f fisst Cong_If ca	owincial I	Act	ct—Delay, ond appeal— an be excus	if can	5 N 4 F N 8 5 N 8 5 N 4 F N 8 5 N 4 S 5 N 4 S 5 N 4
(k)	he excused Cases arising Copy of judg (i) Copy o in fili (ii) Delay	under C ment f fisst Cong_If ca	owincial I	Act	ct—Delay,	if can	5 N 4 F N N N N N N N N N N N N N N N N N
(k)	he excused Cases arising Copy of judg (i) Copy o in fili (ii) Delay	under C ment f fisst Cong_If ca	owincial I	Act	ct—Delay, ond appeal— an be excus	if can	5 N 4 F 5 N 4 F 5 N 4 F 5 N 4 F 5 N 4 F 5 N 4 F 5 N 4 F 5 5 N 4 F 5 5 N 5 5 N 3 3 F 5 5 N 3 3
(k)	he excused Cases arising Copy of judg (i) Copy o in fili (ii) Delay	under C ment f fisst Cong_If ca	owincial I	Act	ct—Delay, ond appeal— an be excus	if can	5 N 4 F N N N N N N N N N N N N N N N N N
(F) (F)	be excused Cases arising Copy of judg (i) Copy of in fili (ii) Delay	under C ment f fisst Con ng—If ce in filing	owincial In ompanies ant's judge un be excu	Act nent in secured	ct—Delay, ond appeal— an be excus	if can	5 N 25 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5
(F) (F)	be excused Cases arising Copy of judg (i) Copy o in fili (i) Delay C	under C ment f fisst Con ng—If ce in filing	owincial In ompanies ant's judge un be excu	Act nent in secured	ct—Delay, ond appeal— an be excus	if can	5 N 4 F 5 N 4 F 5 N 4 F 5 N 4 F 5 N 4 F 5 N 4 F 5 N 4 F 5 5 N 4 F 5 5 N 5 5 N 3 3 F 5 5 N 3 3
(r) (s) (t)	be excused Cases arising (1) Copy of judg (1) Copy o in fili (ii) Delay C	under C ment f fisst Co in filing	ompanies ompanies nrt's judge n be exerceopy in re-	Act nent in secured	ct—Delay, ond appeal— an be excus	if can	5 N 25 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5
(r) (s) (t)	be excused Cases arising Copy of judg (i) Copy o in fili (i) Delay C	under C ment f fisst Co in filing	ompanies ompanies nrt's judge n be exerceopy in re-	Act nent in secured	ct—Delay, ond appeal— an be excus	if can	5 N 29 5 N 29 5 N 29 5 N 29 5 N 29 5 N 29
(r) (s) (t)	be excused Cases arising (1) Copy of judg (1) Copy o in fili (ii) Delay C	under C ment f fisst Co in filing	ompanies ompanies nrt's judge n be exerceopy in re-	Act nent in secured	ct—Delay, ond appeal— an be excus	if can	5 N 25 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5 N 2 S 5
(r) (s) (t)	be excused Cases arising (1) Copy of judg (1) Copy o in fili (ii) Delay C	under C ment f fisst Co in filing	ompanies ompanies nrt's judge n be exerceopy in re-	Act nent in secured	ct—Delay, ond appeal— an be excus	if can	5 1 4 7 1 8 8 5 1 1 4 7 1 8 8 5 1 1 4 7 1 8 8 5 1 1 4 7 1 8 5 1 1 4 7 1 8 5 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
(r) (s) (t)	be excused Cases arising (1) Copy of judg (1) Copy o in fili (ii) Delay C	under Crument fisst Cong.—If con in filing	ompanies ompanies nrt's judge n be exerceopy in re-	Act nent in secured	ct—Delay, ond appeal— an be excus	if can	5 N 29 5 N 29 5 N 29 5 N 29 5 N 29 5 N 29
(r) (s) (t)	be excused Cases arising Copy of judg (i) Copy of in fili (ii) Delay C	under Cr ment f fisst Con in filing	ompanies ompanies nut's judgr un be excu copy in re	Act Act ment in secused view—If c	ct—Delay, ond appeal an be excus y in filing t	if can Delay appeal,	5 N 4 F N 6 8 5 N 4 F N 8 6 N 4 F N 8 6 N 4 F N 8 6 N 4 S 5 N 4 S 5 N 3 8 5 N 3 8 5 N 29 S 12 N 36 S 5 N 38 S 5 N 38 S 5 N 38 S 5 N 38 S 5 N 38 S 5 N 38 S 5 N 38 S 5 N 38
(r) (s) (t)	be excused Cases arising Copy of judg (i) Copy of in fili (ii) Delay C	under Cr ment f fisst Con in filing	ompanies omtes judge un be exce copy in re	Act Act ment in secused view—If c	ct—Delay, ond appeal— an be excus	if can Delay appeal,	5 1 4 7 1 8 8 5 1 1 4 7 1 8 8 5 1 1 4 7 1 8 8 5 1 1 4 7 1 8 5 1 1 4 7 1 8 5 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1

$\begin{array}{lll} \textbf{Delay} - \textbf{Excuse} & \textbf{uf} - \textbf{Discretion, exercise of} - \textbf{Appellate Court, interference by} - \\ & (\textit{Contd}) \end{array}$

14 <i>a</i> /				
(d) Extension of time v (e) Lower Court holding				N 38 F N 1
exercise of discreti		no general i	me ioi	S 5 N 38
(f) No discretion exerc		•••	8.5	N 38 F N 1
(a) Reasons not given i				1 30 T 11 T
(g) Itemsora and Strong	OL TOMBURA	8 th Ctcaso a		N 38 F N 1
(h) Total disregard of	eround of	extension-		
late Court, if will			18 5 1	N 38 F N 1
(11) Appellate Court, when w		a with		S 5 N 38
(iii) Genoral principles	III III III III III	.c. mark	•••	S 5 N 7
(iv) High Court, interference	by_Ex	ercise of disc	ration	5041
founded on mistaken vie			***	S 5 N 39
(v) Importance of matter, if		idered in		S 5 N 27
(vi) Party not guilty of neglig	ence	***	•••	S5N7
1, 14, 20	•••	·** 'a	nother	
•	•		•••	S5N9
		ha	s heen	
made	•••	***		S 5 N 40
(ix) Question of exercise, whe	n arises	•••	. • • •	S5N 40
(x) Question will not arise t	intil perio	d of limitation	on has	
actually expired		***	•••	S 5 N 40
(xi) Reasonable diligence—Te	stol	. :"	. ***	S 5 N 7
(vii) Revision converted into		ime for appe	al ex-	
piring—Delay, if can be	excused	•••	•••	S 5 N 30 S 5 N 39
(xiii) Revision, if lies over orde (xiv) Two appeals against same	or	:45 3		00 N 00
—Second copy furnished				
excused	T SPIROT PILI	ie—Demy, ii	Catt Do	S 5 N 31
(w) Extension of time is a matter of	of concess	nn or indulge	nee	S5N2
(x) Extension of time, right to-I				
lute right		•••		S5N2
(y) Good faith-Necessity of, on a	pplicant	•••	8 5	N7FN5
(z) Grounds-Appellant having good	od case or	merits, if gr	ound:	
				NTFNT
(z1) In filing appeal	•••	***	•••	S 5
(z²) In filing application for leave t	o appeal	•••	***	S 5
(z3) In filing application for review	***	***	•••	S 5
(z4) Jurisdiction of Court-Single	Judgo s	itting in adn	nission	
Court-Power to excuse delay	in filing a	ppeal from O	riginal	
Side or from mofussil Court	•••	•••	•••	S 5 N 46
(z5) Order admitting appeal by exce	using dela	y—II adjudi	eating'	
appeal	•••	•••	•••	S 5 N 45
(z6) Order allowing filing of applica	tion or ap	peal beyond t	ime-	
If 'judgment' within the mean				S 5 % 44
(z7) Order dismissing appeal as bar				
to extend time_If arder pa	ssed in a	ppeal' within	n Sec.	
109 (a), Civil P. C		•••	:	S 5 N 45
(z5) Order extending time and admi	itting app	ealII 'final	order'	
within S. 109, Civil P. C.	•••	•••	•••	S 5 N 45
(z*) Order must give reasons	•••	•••	•••	S 5 N 41

Delay—Excuse of—(Contd.)
(z10) Order passed on no ovidence—Omission to consider whether
there was sufficient cause for delay—Revision, interference
in—Propriety of S 5 N 30
(z11) Order passed without investigating into allegation of illness
-Revision, interference in-Propriety of S 5 N 3
(z12) Party must show sufficient cause for not filing in time and
gircumstances to onable Court to exercise discretion to
oxtend time S5NS
(v13) Principle applies only to admission of and not to granting of
allowing it S5N
(all) Proceedings under Bongal Proorgancy Powers Ordinance
1931 S5N4 FAS
(z15) Proceedings under Land Acquisition Act S 5 N 4 F N 8
(z16) Prosecuting in good faith and due diligence another civil.
proceeding
(i) Absence of researchile grounds for prognouting wrong
ig delay So a s
(ii) to appeal in
lelay: S5N9FN7
(iii) Only period during which wrong proceeding was pen-
and can be excused ***
(iv) Pendency of pauper application—If sufficient cause for
(v) Prosecution of appeal in wrong Court knowing that
(vi) Prosecution of appeal in wrong Court owing to bona fide doubt - Delay if can be oversed S5 N 9 F N 9
full Descention of a 11 the formation of authorization
cause for dolay in filing appeal S 5 N 9 F N 2
cause for doing in inting appear
-If sufficient cause So N 9 FN 2
P. C.—Time, if will be extended
(v) Prosecution of one of two remedies open and failing on S 5 N S
morits—Time spent, if can be excused
(xi) Prosecution of revision bona fide where more than
one view of its competency was possible — Delay it
To an and a state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state
(xii) Review—Absence of leasonable grounds for—If suffi-
(viii) Review — Application knowingly filed beyond time without excuse—If sufficient cause for delay in filing NOFN 7
without excuse—If sufficient cause for delay in ming S 5 N 9 F N 74

Anneal then filed Time, if can be extended:
(xv) Time spent in prosecuting infractuous appeal—If suffi-
cient cause 85 N 9
10-10 tim 1 1 m · · · · · · · · · · · · · · · · ·
· · · · · · · · · · · · · · · · · · ·
on of negligence - 11 S 5 N 9 F N 7a
(xix) Wrong prosecution of application under S. 151, Civil S 5 N 9 F N 7s

Delay—Excuse of—(Contd.) (x17) Reasonable diligence

(z.17) Reasonable diligence	
(1) Application to prefer appeal not thought of until very	
late—If amounts to due deligence S	NSFN2
(ii) Delay of 23 days in applying for copies—If reason-	
able	S 5 N 8
(111) Duty of appellant to prefer appeal as speedily as	., 0 1. 0
	NSPN6
possible S 5 (1y) Existence of, after removal of cause for delay—Ques-	
	S 5 N 8
tion of fact w days of	., O I()
sw nays or	S5 X 8
. (1)	2070
- (necording	
to mistaken calculation — If amounts to due dili-	N 0 13 37 C
	NSFNG
(vn) Necessity of showing in addition to sufficient cause	S 5 N 7
(viii) Party waiting tilf last day-Illness proventing filing in	
time-Delay, if can be excused	S 3 N 8
(ix) Party waiting till last moment-Appeal filed late due	
to mability to cross river in flood-Delay, if can be	
e\cused	SONS
(x) Proof of, in addition to existence of sufficient cause-	
Necessity of	S 3 N S
(M) Want of due diligence after removal of cause for	
delay-Whether disentitles party to indulgence	S5N8
(xii) Whether should be shown even during period antece-	
dent to delay	S5N8
(z18) Refusal to excuse—Revision on order of competency of	S 5 N 39
(z19) Sufficient cause	
(1) Amendment of decree	
(a) Appellant under bona fido mistake that time	
runs from the date of amendment - Absence of	
negligence—Time, if can be extended	S 5 N 14
(b) Name of defendant omitted in decree and added	
by amendment Name substituted in memo of	
appeal after time—It sufficient cause	S 5 N 14
(c) When sufficient cause	S 5 N 14
(11) Appeal as pauper-Leave not granted-Time to pay	
court-fee given-Payment within such time-Suffi-	
ciency of	S 5 N 29
(iii) Appellant or applicant misled by order, practice or	
judgment of High Court	85
(iv) Being engaged in important litigation — If sufficient	
causo	S 5 N 28
(v) Body corporate, puty - Delay, if can be excused	S 5 N 26
(vi) Burden of proof of	S 5 N 37
(vu) Circumstances contemplated in S. 14-Whether con-	
stitute sufficient cause within S. 5	S 14 N 5
(vii) Copy of judgment	
(a) Accidental loss of copy on day of filing appeal-	
	N 35 F N 1
(b) Delay in filing—If sufficient cause	S 5 N 33
(c) Time taken for obtaining copy not required to	0.5 37.63
be filed—If sufficient cause	S 5 N 33

Delay-Excuse of-Sufficient cause-(Contd.)

-Excuse of -Sufficient cause-(Contd.)	
(ix) Delay-Every day's delay must be properly explained:	S 5 N 37
(x) Delay in obtaining copy of judgment not explained—	
	5 N 7 F N 5
(1) 701	S 5 N 23
(xi) Discovery of fresh avidence—If sufficient cause	DA MUG
(x11) Discretion — Principles for exercise of, when sufficient	
cause shown	S5N7
(xii) Existence of question of Question of fact	S5N6
(xiii) Failure of Court of Wards to file proceeding, if suffi.	
cient cause	S 5 N 32
(m.) The programmer of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the co	S 5 N 17
	201
(xv) Fraudulent re-presentation of appeal-Delay, if can be	S 5 N 17
excused	S 5 N 26
(xvi) Government, party—Time if can be extended	
(xvii) Ignorance—Ignorance of law—If sufficient cause	S 5 N 13
(xviii) Illness of party	
(a) Antecedent diligence, if should be shown	S5N 15
(b) Illness after expiry of period of limitation—If	
	S 5 N 15
	D 0 2. 2.
(c) Illness proved to be sufficient cause-Reasonable	
diligence in prosecution of appeal till he fell ill-	S 5 N 15
Proof of-Necessity of	B D N 10
(d) Question whether illness affords sufficient cause	
-Question of fact	S 5 N 15
(c) When sufficient cause	S 5 N 15
(xix) Importance of subject matter is sufficient cause	B 5 N 27
(xx) Imprisonment of party	
(a) Criminal offence—Convict's ignorance of right of	
	S 5 N 20
appeal—If sufficient cause	S 5 N 20
(b) When sufficient cause	201
(xxi) Leave to appeal as pauper sought for, on appeal being	
returned as deficient in court-fee-Time, if can be	S 5 N 29
extended	S 5 N 6
(xxii) Liberal construction to be given	SONO
(xxiii) Meaning of	S 5 N 6
(xxiv) Mere proof of existence of, if will compel Court to	
	S5N2
(xxy) Minority	
(XXV) Milhority	
(a) Guardian's failure to appeal due to his having	
personal motive opposed to minor's interest—If	S5N 16
sufficient canse	S5N 16
(b) If ground of extension	D 0 21 ==
(c) Negligence—Absence of sufficient cause—Delay,	S5 N 16
if can be excused	S 5 N 16
(d) Negligence of adult relations—Effect	S 5 N 12
(xxvi) Mistake arising from neglicence—If sufficient cause	SDNI
(xxvii) Mistake committed without any real excuse-If suffi-	a = 17 10
cient cause	S 5 N 12
(xxviii) Mistake obvious, if can be said to be bona fide	S 5 N 13
	01
	N 8, 9, 9b
(a) Counsel's clerk (b) Foolish mistake in calculation of time—S5 N 13 L (b) Foolish mistake in calculation of time and due are and	N 12 F N 8
(c) Mistake occurring even inspite of due care and	
(c) Blistake occurring even hispite of due care and	S 5 N 12
attentinn—If sufficient canse	

GENERAL INDEX	2775
Delay-Excuse of-Sufficient cause-Mistake of agent-(Contd.)	
(d) Omission of pleader's name in vakalatnama by	
oversight—If sufficient cause	S 5 N 12
(e) When sufficient canse	S 5 N 12
(xxx) Mistake of agent hona fide—Party acting without due	
care and attention relying on agent—If sufficient	
cause	S 5 N 12
(xxxi) Mistake of Court	
(a) Copying department, delay due to—If sufficient	AT 00 TINE
cause S5 N 22; S 5	N 22, F N 4
(b) Omission to give time and place at which Vaca- tion Judge proposed to hold sitting of Court—If	
sufficient cause	S 5 N 22
(c) Party misled by—Proof that he acted with due	5010
care and attention—Necessity of	S 5 N 22
(d) Party prevented from filing appeal in time by	5 5 21 22
mistaken order of Court-Delay, if can be	
excused	S 5 N 22
(xxxii) Mistake of Court or of its officers	
(a) If sufficient canse	S 5 N 22
(b) Party misled by change of practice—If amounts	
to sufficient cause	S 5 N 22
(xxxiii) Mistake of fact—Bona fides, test of	S 5 N 12
(xxxiv) Mistake of fact of party or agent	S5N 12
(xxxv) Mistake of law	
 (a) If sufficient for asking Court to exercise discre- 	
tion	S 5 N 13
(b) Mistake committed bona fide—If sufficient cause:	S 5 N 13
(c) Mistake of counsel not due to ignorance but to	
want of due care and attention—If sufficient	S 5 N 13
(d) Mistake proceeding from culpable negligence of	D 0 M 10
lawyer—If sufficient cause	S 5 N 13
(e) Negligent advice of lawyer-If sufficient cause	S 5 N 13
(f) Party actiog on mistaken advice—Right to indul-	
gence	S 5 N 13
(g) Party acting on wrong advice of lawyer when	
amounts to sufficient canse	S 5 N 13
(h) Party consulting lawyers of inferior standing and	
little experience—Acting on wrong advice—	
Effect	S 5 N 13
(1) Wrong advice amounting to sufficient cause—	C # 37 * 0
Proof of reasonable diligeoce—Necessity of (j) Wrong advice by lawyer due to want of reason-	S 5 N 13
all alist and the same of the same than the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the	S 5 N 13
(I) Wrong advice of lawyer — Every wrong advice,	
if amounts to sufficient cause	S 5 N 13
(1) Wroog advice of lawyer based on untrue state-	
ment of facts made by party-Acting on such	
advice—Il sufficient cause	S 5 N 13
(m) Wrong advice of lawyer not knowlog recent	
change in law cartailing period of limitation— If sufficient cause for delay	C 5 37 10
it sufficient cause for delay	S 5 N 13

Delay-	-Excuse		cient	cause—			aw(Contd.)				
		(n) ***		7.74	**		* 4 %	hich e	ven			
		٠.						is lil	kely			
				• • •				ounts	: to			
		50	flicien	t cause							S	N 13
		(c) Wr	ong m	dvice wh	ich n	legal	advise	r of reas	son.			
				ll would								
			ent ca								S	N 13
		(p) Wr	ong n	roceeding	g tako	n on bo	ona fide	nistak n	e of			
		la	w—Ď	elay, if c	an be	oxense	d				S	N 13
	(tvx/x)	Mistake	of law	yor-Afl	idavit	of law	yer th	at it wa	25 A			
		mistake	and n	ot bona	fide-	Necess	ity of				Si	N 1
	(tivxyy)	Mistake	of ple	eador du	o to a	aroless	ness-	If suffic	ient			** ** (
		causo	-				***			5 N	11	FΝί
	(itivazz)	Mistake	which	k conld	liave	been a	n er tod	by pro	oper			27.10
				ufficient			• • • •				5 (N 1:
	(xixxx)	Mistake							nna			5 N 1
				siness—I					•••		200	N 1
	(14)	Negligen	co ol s	igent, il	neglig	ence of	party		***			
	(xli)	Negligene	e ol b	ody corp	orate-	_If suf	Ticient	cause			8	5 N 10
		Negligen							ient			
	,,	causo		•••		••	• • • • • • • • • • • • • • • • • • • •					5 N 10
	(tilly)	Negligen	ce of r		ent.	If suffi	cient o	ause				N 1
		Negligen									S	N 1
		Negligen				••	۰۰۰ بمحدیدار	in vol	ina			
	(XIV)	regrigen	TEON	ficiont c	01	oss neg	grigence	3 111 1410	ŝ	5 N	11	FN:
	(vlm)	Negligen	-11 Su	de des	Muse .	 ka baiya	et but	noeligen		-		
	(2111)	Whethe	or enfli	icient cai	III I DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRACTOR DE CONTRAC	ac none	250 1544	H091.90.			8	N 1
	(xlvii)	Negligen	ca of	plooder.	mense	carele	eennes	ofAn	peal			/
	(,			Court-					s	5 N	11	F'N
	(xlviii)	Negligen						cause			8 0	N 1
	(vliv)	Negligen	ce of	vakil in	not pa	ring p	rinting	charge	s in			
		time-1	Party	otherwis	se dil	gent—	Delay,	if can			-11	FN
		excused				••	***			DN	71	FN
	(1)	Negligen	t but	bonest m	istako	—If ex	cusabl	Ð		0 14	11	
	(11)	Non ava			rt-feo	stanı	8 Wh	en amou	mıs		8.0	N 2
	/12	to suffic	cient c	auso				nt agusa			S	N 2
	(111)	Party be	ing a	pardanas	inn ia	15	sumere	not in a	ഹർ.			
	(1111)	Party b		s—If suff				100 ttr P			SS	N 2
	(hv)	Party m	delod	be Jado	otion	on to l	holiday	sTime	ii.			
	()	can be			arion	45 40 4			٠		S_{2}	N 24
	(lv)	Poverty			ds—Iİ	sufficie	ent cau	ISE			Sp	N 18
		Practice	of Co	urt								
		(a) Pa	itv m	dsled by-	_Dela	y due	to fail	ure to g	140		c 5	N 23
		ī	nforma	ition of d	ate of	judgme	ent—16	excusab	ie:		Š 5	N 22
		(b) Pa	rit m	isled bv-	_Whe	ther sul	Micient	cause				
				isled by p			other	nign Co	HIL		S ő	N 25
	<i>(</i> 1		_if su	fficient c	use .	••	a 303a	. If. on	ffi.			
	(17)1) Quarrel cient c	Detw		mants	causin	R nerg	y	S	5 N	35	r n 1
	Avin	Question	usu Tubel	ther fict	e and	eireum	stance	constit				
:	1741	sufficie	nt cau	se—Il on	e of la	W					Sõ	N 35

Delay - Excuse of - Suffici	ent cause—(Co	ntd.)			
(lix) Subsequen	t decisions alt	ering law-	If ground	for	
excusing o	lelay		•••		S 5 N 19
(lx) Test to sec	if eauso is suffi	cient			S 5 N 6
	fore threat used	against ap	pellant—If s	uffi.	~ - ** -=
	so for delay			:	S 5 N 17
(lvn) Timo tak excused	en for transia	ing Juagm	ent—11 ean		N 35 F N 1
(lvm) Unforeseen	orenmetange	agreina dal	ovWhom o		MOOFMI
cient cau		causing uci	ay-minen a	u111-	S 5 N 34
(z ²¹) Sufficient cause		time to be	made out	•••	S 5
(z ²¹) Sufficient cause					
refuse to grant		•••	•••		S 5 N 2
(22) Sufficient cause	not shown—l	Discretion o	f Court—Op	por.	
		•	•••	•••	S5N2
١,		111			N3FN1
(, . denrived of		· mound	not be lig		S 5 N 4
			***	•••	S 3 N 40
Mere delay when him	tation has not e-	qurea—En	cet	•••	2 2 N 40
Demand					
What is, within Ait	io	•••	•••	•••	A 60 N 8
Deposit					
- Doposit and withdia	wals of monov	-Account	consisting	of—	
Balanco due on-Sui				•••	A 85 N 9
Deposit as security for		ec of certain	act, recover		
-Suit for-Limitation	on	•••	<u></u>		A 120 N 13
Deposit as security fo	r due performa	ace of office	-Recovery		1 100 31 10
Suit for -Limitation			***	• •	A 120 N 13
- Deposit in Court-Wi					A 99 N 6
Deposit payable at spe	cined time—Sir	t Ior—Lum	itation—Stai	-	A 60 N 7
point Deposit payable on de	mand	•••	•••	•••	T 00 X 1
(a) Suit for—Limit			•		A 120 N 13
(b) What is		•••	•••	••••	
(i) Deposit a	s carnest mone		ase of prope	rty,	
	one payable on		•••	•••	A 60 N 7
	s security for du		ee of certain	act,	1 00 37 5
whother	one payable on e f monoy payabl	emanu	d time who	thos	A 60 N 7
denosit i	ayable on demai	e at speciae	a time, who	ther	A 60 N 7
	n condition th		e should ref	urn	
same on	happening of	a future co	ontingent ev	ent,	
	doposit pryable		•••	•••	A 60 N 7
	id by a person t			iase	1 00 32 7
- Of proper	ty, whether dep	oen bakania	on demand	•••	A 60 N 7
(a) Interest upon—	Suit for _ Lan	sitation and	licable who	ther	
	thic to suit for			•••	A 60 N 4
(b) Monoy deposite				•••	V 00 N 3
Deposited money, suit	for				
(a) Against person v	who has placed b	imself in 10	sition of lan	ker	
with regard to	particular person	ı—Lımitati	on	•••	7 60 2 6

Deposit-Deposited money, suit for-(Cont

---Suit against-For moveable property deposited

Deposit-Deposited money, suit for-(Contd.)	
(b) Burden of proof as to spit being time-barred no account of	
demand being made beyond limitation	A 60 N 5
(c) Burden of proof as tn whether transaction is deposit or	
loan	A 60 N 5
(d) Deposit payable at specified time but contract between	
leposit is to be	
reposite to so we	A 60 N 7
(e) that it shall be	
payable on demand for applicability of Art. 60.—Limitation:	A 60 N 7
(t) Traitation Objection and the	A 60 N 10
(g) Money deposited as earnest money for purchase of property	11 01
T !!L.!!	A 60 N 7
(h) Money deposited as security for due performance of certain	A 60 N 7
act—Limitation	24 0
(i) Money deposited nn terms that depositee should return	A 62 N 17
equivalent sum to depositor—Limitation	21 02
(1) Money deposited with Nattu Knttai Chettis on thavanai	A 60 N 7
system—Limitation	A 60 N 6
(k) Scope of Art, 60	11 00 1
(I) Sum of money kept in deposit with a particular person—	A 62 N 31
Limitation	24 02 11
(m) "When demand is made"	
(i) "Demand" by Nattu Kottai Chetty husband in whose	
name wife's stridhan is deposited in a firm, whether	A 60 N 9
demand binding on wife so as to start time running	11 00 0
(ii) "Demand", by whom should be made to start time	A 60 N 9
running under Art. 60	A 00 s.
(in) "Demand", what is, to start time running under	A 60 N 8
Art. 60	A 60
(n) Where deposit is payable on demand—Limitation	•••
Deposited money in Court as in usum jus habentis-Money with-	
drawn by person not entitled to it-Suit for such money-	A 62 N 31
Limitation	A 60 N 2
Express trust created by Suit for Limitation	7. 00 -
——Loan	A 60 N 2
(a) Distinguished from deposit	M 00 11
(b) Presumption as to, in transactinn between customer and	A 60 N 5
banker	7, 00 -
(c) Presumption as to, where question arises whether transaction	A 60 N 5
is deposit or loan	A 145 N 3
Meaning of	A 49 N 2
	A 45 H =
Property deposited-Property wrongfully detained by depositary	A 49 N 2
-Recovery of Suit for Limitation	A 49 N 3
	A DO M O
1177b-41b 11	A 60 N 2
Whether necessarily creates a trust	
Depositary	
Legal representative of Suit against, for moveable property	A 145 N 5
deposited with deceased depositary—Limitation	A 145 N 3
Meaning of	M 110
Cuttant I To 11 11 11 11 11 11 11	

Depositary-Suit against, for moveable property deposited-(Cont.1.)		
(a) Allegation of plaintiff as to deposit, whether sole basis			
ascertaining period of limitation applicable to such suit		A 145	
(b) Applicability of Art. 49 and Art. 145		A 145	
	145;	A 145	N 6
(d) Suit for redemption of pledge-Limitation applicable, when	her		
same as applicable to suit against depositary for move	ble		
		A 145	N 7
property deposited Devisee	•••	U TAO	14 1
· · · · · · · ·			
Suit by, for possession of immovable property			
(a) Alleging that instrument under which defendant is hold	ing		
property is not binding on plaintiffLimitation		A 140	N 7
(b) Burden of proof in such suit		A 140	
(c) By other devises where one devises has obtained possess		1110	110
and bas subsequently lost it—Limitation		A 140	
(d) By successor of devisee—Limitation		A 140	N 6
(e) Cause of action on which such suit is based, in whose far	our		
must arise		A 140	N 2
(f) Cause of action which has already accrued to person for	om		
whom devisee derived his title-Limitation applicable	•••	A 140	N 9
(g) Challenging adoption under which defendant claims to be		7 730	14 2
possession—Limitation		A 140	
(h) Limitation—Starting point		A 140 I	
(i) Who has obtained possession but has subsequently lost it		A 140	N 2
Disability			
expiring on holida	7—		
•	•••	S 4 1	N 9
•			
	•••	SGN	23
(b) Adopted son after attaining majority though title as adop	ted		
son disputed—If ground		23 F	NA
(a) Disquelified proprietor whose estate is under managem	ent		
(e) Disqualified proprietor whose estate is under managem of Court of Wards		SGN	0.0
or Court of Wards	• • • • • • • • • • • • • • • • • • • •	2014	23
		~	
		SGN	23
fraud of defendant—If ground	•••	S 6 N	23
(f) Ignorance of defendant's residence	S 6 N	23 F I	N 6
(g) Involuntary absence from country due to transportation :	SGN	23 F I	N 4
ncıl	SEN	23 F I	¥ 6
I of such personAckno		20 2 2	
			21
···	•••	٥	21
Discharge			
Capacity to give discharge			
(a) Capacity of one joint administrator to give discharge on bel	alf		
of all		S 7 N	90
(b) Capacity of one joint executor to give discharge on behalf			~0
all executor to give discharge on behan	UI	S 7 N	00
	***	911	20
(c) Capacity of one joint trustee to give discharge on hehalf	OI		
all	•••	S 7 N	
(d) Capacity of one of several co-hoirs to give discharge		87 N	23
(e) Capacity of one of several co-mortgagees to give discharge	on		
behalf of all	***	SIN	22

2778 GENERAL INDEX	
Deposit-Deposited money, suit for-(Contd.)	
(b) Burden of proof as to suit being time-barred on account of	
demand being made beyond limitation	A 60 N 5
(c) Burden of proof as to whether transaction is deposit or	
loan	A 60 K 5
(d) Deposit payable at specified time but contract between	
parties showing that after period so fixed, deposit is to be	
regarded as payable nn demand—Limitation	A 60 N 7
(e) Deposit, whether must be under agreement that it shall be	A 60 N 7
payable on demand for applicability of Art. 60—Limitation:	A 60 N 10
(f) Limitation—Starting point	A 00 1, 20
(g) Money deposited as earnest money for purchase of property Limitation	A 60 N 7
(b) Money deposited as security for due performance of certain	21.00
act—Limitation	A 60 N 7
(i) Money deposited on terms that depositee should return	
equivalent sum to depositor—Limitation	A 62 N 17
() Money deposited with Nattu Kottai Chettis on thayanai	7
system—Limitation	A 60 N 7
(k) Scope of Art. 60	A 60 N 6
(1) Sum of money kept in deposit with a particular person-	A 62 N 31
Limitation	A 02 11 0-
(m) "When demand is made"	
(1) "Demand" by Nattu Kottai Chetty bushand in whose	
name wife's stridhan is deposited in a firm, whether demand hinding on wife so as to start time running	A 60 N 9
(11) "Demand", by whom should be made to start time	
running under Art. 60	A 60 N 9
(iii) "Demand", what is, to start time running under	A 60 N 8
Art. 60	A 60 K 60
(n) Where deposit is payable on demand—Limitation	11.
- Deposited money in Court as in usum jus habentis-Money with-	
drawn by person not entitled to it—Suit for such money—	A 62 N 31
Limitation Express trust created by—Suit for—Limitation	A 60 N 2
Loan	
(a) Distinguished from deposit	A 60 N 9
(b) Presumption as to, in transaction between customer and	. 22 37 5
banker	A 60 N 5
(c) Presumption as to, where question arises whether transaction	A 60 N 5
is deposit or loan	A 145 N 3
Meaning of	A 49 N 2
Moveable property deposited-Recovery of-Suit for-Limitation:	
Property deposited-Property wrongfully detained by depositary	A 49 N 2
-Recovery of Snit for Lamitation	A 59 N 3
-Recovery of Suit for Limitation	A 60 N 2

Legal representative of Suit against, for moveable property A 145 N 5 A 145 N 3 deposited with deceased depositary-Limitation -Meaning of ... ---•••

Suit against ... For moveable property deposited

Depositary

Deposita	rySuit against, for	moveable :	property d	eposited—(C	Cont.(1.)				
	Allegation of plaintif								
•		••				Λ1			
	•					A 1			
					5,	A 1	45	N	6
								.,	,
D. million	property deposited	•••	•••	•••	•••	۸ 1	40	N	'
Devisee			-						
-Suit	by, for possession of i	mmovable pr	operty	dent in bold	and.				
(a) Alleging that instrue property is not bir	neut moret	intell Lim	ident is now	ing.	A 1	ı'n	N	7
0) Burden of proof in s		инт~тип	testion.	•••	λí			
	By other devises wh	ere one devi	ee bas obt	nined possess		•••	10	••	•
(and has subsequent			***	•••	A 1	40	N	2
(d	l) By successor of devi			***		A 1	40	N	6
	e) Cause of action on w			in whose fav					
	must arise	•••	•••	•••	•••	A 1	40	N	2
(f) Cause of action wh								_
	whom devisee deriv					A 1	40	N	4
(g) Challenging adoption		h delendant	claims to he			40	B.T	17
- 1	possession—Limita h) Limitation—Startin	tion	•••	***	•••	A 1 A 1			
	i) Who has obtained in		has subsect	unntly lost it	•••	Αj			
Disabili	•	ossession out	mas subscu	uener) 2000 10	•••		40	.,	-
	tti-, · · ·			1					
			expirii	ng on holiday			3 4	NT	_
	, •			•••	•••		, +	14	U
— ,	a) Absence from count:	ry of plaintif	r			8	6 1	1 9	3
ì	b) Adopted son after at	taining majo	rity though	title as adop	ted		-	_	•
	son disputed-If gr		•••		861	1 23	F	N	5
(Disqualified proprie 	tor whose e	state is und	er managem	ent	_			
	of Court of Wards	. j:: ,		***		S	13	1 2	3
	At Dank at these haves			1, 1			٠.	* ^	
		•			••	0	6 1	٧ 2	J
	of uc-cuusiii		•••			8	61	10	3
	(f) Ignorance of defend	ant's residen			S 6 N				
(gl Involuntary absence	from countr	y due to tra	nsportation :	S 6 1	1 23	F	N	4
- 1	h) Pendency of appeal	to Privy Cor	ncil		861	1 23	F	N	5
	rson under-Agent du		d of such p	erson—Ackno	-WC				
	dgment or payment by	—Effect of	•••	•••	•••		5	5 2	.1
Discha									
	pacity to give discharge								
	(a) Capacity of one join	t administrat	or to give dis	scharge on bel	nalt	_			
	of all	***	 		. **:	S	71	¥ 2	6
	(b) Capacity of one join		give disens	rge on nenat	tot			٠.	_
	(c) Capacity of one join	it trustee to	cive discha-	rge on helel	F of	ð	71	١ 2	0
	all	***	p-10 uladila	-Po ou nellal		8	7 1	10	5
	(d) Capacity of one of	several co-ho	irs to give d	ischarge	•••		71		
	(e) Capacity of one of s	severaf co-mo	rtgagees to	ive discharge	on	~			
	behalf of all	•••	•••	•••	•••	S	71	: 2	2

Discharge—Capacity to give discharge—(Contd.) (f) Capacity of one of several joint creditors to give discharge
on behalf of all S7 N 23 (g) Capacity of one of several partners to give discharge on behalf
(h) One tennet-in-common—If can give discharge on behalf of all in respect of suit for mesne profits \$7.N.27
(A) The second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second o
(1) (a) (b) (c) (c) (d) (d) (d) (d) (d) (d) (d) (d) (d) (d
(i): ad minor—Adult, if
can give discharge without concurrence of minor's guardian: STX29
Dismissai
- Application for setting aside, by assignee of insolvent
fol Limitation Strating point 170, 179 X I: A 172 N
(b) Provision for 172 N 3
(a) Provision for (e) Whother time extended by virtue of S. 5, Limitation Act A 172 N 3
GAT 1001 12 0 Cultura 1 1504 A 170 N 12 A 173 N
(b) Provision for 172 N3
(c) Whother time extended by virtue of S. 5, Limitation Act 173 N3
(c) whother time extended by virtue of S. S. Limitation and
1 of octant 255 Denuit Dismissar for
. Of appeal Setting aside of See under Appeal.
Of suit
(a) Death of puty to suit—Whether causes dismissal of suit 172 X 2
(a) Death of puty to suit—Whether causes dismissal of suit A 172 N 3
Dispossession
\ 165 N *
are all the second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second seco
Mere refusal by fundlord to recognize lease, whether amounts to
—Of limited owner—Whether one of reversioner 119 & 144 %
— Of limited owner—Whether one of reversioner A 149 & 144 & 55 — Of Municipality in respect of drains on sides of public street—
—Of limited owner—Whether one of poversioner \(\lambda \) 149 & 144 & 0 \(\lambda \) Municipality in respect of drains on sides of public street—\(\lambda \) 146.A V J \(\lambda \) What amounts to \(\lambda \) 146.A V J
Of limited owner—Whether one of oversioner Of Municipality in respect of drains on sides of public street— What amounts to Person dispo-sessed of immovable property in execution sale
Of limited owner—Whether one of poversioner Of Municipality in respect of drains on sides of public street— What amounts to Person disposessed of immovable property in execution sale (a) Amilection by count limin disposession
Of limited owner—Whether one of poversioner Of Municipality in respect of drains on sides of public street What amounts to Person disposessed of immovable property in execution sale (a) Application by, complaining disposession (i) Application by judgment-debtor complaining of deli-
Of limited owner—Whether one of poversioner Of Municipality in respect of drains on sides of public street— What amounts to Person disposessed of immovable property in execution sale (a) Application by, complaining disposession (i) Application by judgment-debtor complaining of delivery of property in excess of what has been decreed very of property in excess of what has been decreed.
Of limited owner—Whether one of poversioner Of Municipality in respect of drains on sides of public street What amounts to - Person disposessed of immovable property in execution sale (a) Application by, complaining dispossession (i) Application by judgment-debtor complaining of delivery of property in execs of what has been decreed or sadd—Limitation
Of limited owner—Whether one of poversioner Of Annicipality in respect of drains on sides of public street. A 146 A N 3 What amounts to Person disposessed of immovable property in execution sale (a) Application by complaining dispossession (i) Application by independ debtor complaining of delivery of property in excess of what has been decreed or sald—Limitation (ii) Limitation—Starting point
Of limited owner—Whether one of poversioner Of Municipality in respect of drains on sides of public street— What amounts to - Person disposessed of immovable property in execution sale (a) Application by, complaining disposession (i) Application by judgment debtor complaining of delivery of proposity in executions abeen decreed or sald—Limitation— (ii) Limitation—Starting point (iii) Time, whether exchended on ground that Court is closed
Of limited owner—Whether one of poversioner Of Municipality in respect of drains on sides of public street What amounts to - Person disposessed of immovable property in execution sale (a) Application by, complaining disposession (i) Application by judgment-debtor complaining of delivery of property in excess of what has been decreed or sold—Limitation (ii) Limitation—Starting point (iii) Time, whether extended on ground that Court is closed on last day of limitation (iii) Time, whether extended on ground that Court is closed on last day of limitation (iii) Time, whether extended on ground that Court is closed on last day of limitation (iii) Time, whether extended on ground that Court is closed on last day of limitation (iii) Time, whether extended on ground that Court is closed on last day of limitation
Of limited owner—Whether one of poversioner Of Municipality in respect of drains on sides of public street— What amounts to Person disposessed of immovable property in execution sale (a) Application by, complaining disposession (i) Application by judgment-debtor complaining of delivery of property in excess of what has been decreed or sald—Limitation—starting point
Of limited owner—Whether one of poversioner Of Municipality in respect of drains on sides of public street What amounts to - Person disposessed of immovable property in execution sale (a) Application by, complaining dispossession (i) Application by judgment-debtor complaining of delivery of proporty in excess of what has been decreed or sadd—Limitation (ii) Limitation—Starting point (iii) Time, whether extended on ground that Court is closed on last day of limitation (b) Remedies of (b) Remedies of
Of limited owner-Whether one of poversioner Of Municipality in respect of drains on sides of public street. Nhat amounts to Person dispossessed of immovable property in execution sale (a) Application by, complaining dispossession (i) Application by indement-debtor complaining of delivery of proporty in execus of what has been decreed or sold—Limitation (i) Limitation—Starting point (iii) Time, whether extended on ground that Court is closed on lest day of limitation (iv) Under O. 21, R. 100, Civil P. G.—Limitation (b) Remedies of Saut for
Of limited owner—Whether one of poversioner Of Municipality in respect of drains on sides of public street— What amounts to - Person disposessed of immovable property in exceedings also (a) Application by judgment debtor complaining of delivery of property in excess of what has been decreed or sold—Limitation (i) Limitation—Starting point (iii) Time, whether exchended on ground that Court is closed on last day of limitation (iv) Under O. 21, R. 100, Civil P. G.—Limitation Smit for Smit for (a) Against assignee of last manager of endowed property—Suit,
Of limited on ner-Whether one of roversioner Of Municipality in respect of drains on sides of public street— What amounts to Person dispossessed of immovable property in execution sale (a) Application by, complaining dispossession (i) Application by judgment-debtor complaining of delivery of proporty in execus of what has been decreed or sold—Limitation—Starting point (ii) Time, whether extended on ground that Court is closed on last day of limitation (iv) Under O. 21, Il. 100, Civil P. C.—Limitation Oh Remedies of Sut fore (a) Against assignee of last manager of endowed property—Suit, whether one for pessession A 120 N 4
Of limited owner—Whether one of poversioner Of Municipality in respect of drains on sides of public street— What amounts to - Person disposessed of immovable property in exceedings also (a) Application by, complaining disposession (i) Application by independent debtor complaining of delivery of proposty in excess of what has been decreed or said—Limitation— (ii) Time, whether exchended on ground that Court is closed on last day of limitation— (iii) Time, whether exchended on ground that Court is closed on last day of limitation— (iv) Under O. 21, R. 100, Civil P. C.—Limitation (b) Remedies of - Sunt for (a) Against assignee of last manager of endowed property—Suit, whether one for possession (b) For dispossession of rendee of occupancy rights when sale is
Of limited on ner-Whether one of roversioner 149 d. 144 s
Of limited owner—Whether one of poversioner Of Municipality in respect of drains on sides of public street. Vinat amounts to Person dispossessed of immovable property in execution sale (a) Application by, complaining dispossession (i) Application by judgment-debtor complaining of delivery of property in excess of what has been decreed or scald—Limitation recess of what has been decreed (ii) Time, whether extended on ground that Court is closed (iii) Time, whether extended on ground that Court is closed (iv) Under O. 21, R. 100, Civil P. C.—Limitation (b) Remedies of Sunt for (a) Against assignee of last manager of endowed property—Suit, whether one for possession (b) To dispossession of rendee of occupancy rights when sale is made without landlord's written consent—Limitation Symbolical dispossession, whether dispossession within Art. 165 A 165 N 3 A 120 N 4 A 120 N 4
Of limited on ner-Whether one of roversioner Of Municipality in respect of drains on sides of public street— What amounts to Person dispossessed of immovable property in execution sale (a) Application by, complaining dispossession (i) Application by indigment debtor complaining of delivery of proporty in execus of what has been decreed or sold—Limitation—Starting point (ii) Time, whether extended on ground that Court is closed on last day of limitation (iv) Under O. 21, R. 100, Civil P. C.—Limitation (b) Remedies of Sut fore (a) Against assignee of last manager of endowed property—Suit, whether one for pessession (b) Tor dispossession of vendee of occupancy rights when sale is made without Landlord's written consent—Limitation —Symbolical dispossession, whether dispossession within Art. 165 Distress
Of limited on ner-Whether one of roversioner 149 d 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s of 144 s
Of limited on ner-Whether one of roversioner Of Municipality in respect of drains on sides of public street— What amounts to Person dispossessed of immovable property in execution sale (a) Application by, complaining dispossession (i) Application by indigment debtor complaining of delivery of proporty in execus of what has been decreed or sold—Limitation—Starting point (ii) Time, whether extended on ground that Court is closed on last day of limitation (iv) Under O. 21, R. 100, Civil P. C.—Limitation (b) Remedies of Sut fore (a) Against assignee of last manager of endowed property—Suit, whether one for pessession (b) Tor dispossession of vendee of occupancy rights when sale is made without Landlord's written consent—Limitation —Symbolical dispossession, whether dispossession within Art. 165 Distress

Distress—Distress damage feasant—(Contd.)	
(b) Right conferred by Cattle Trespass Act, whether similar to	
distress damage feasant	A 28 N 1
(c) Under English law-Right of, whether wists in India	A 28 N 1
Effected under provisions of statutory enactments, whether	
seizure of moveable property under legal process within the mean-	
ing of Art. 29	A 28 N 1
Excessive distress	
(a) Case where excessive distress is doing act alleged to be in	
pursuance of any enactment—Limitation	A 28 N 1
(b) Suit for compensation .	
(1) Limitation—Starting point	A 28 N 3
(ii) Where excessive distress is "misfeasance or malfeas.	
ance" within Art. 36-Limitation	1 29 N 1
Illegal distress	
(a) Suit for compensation	
(1) Aguinst Municipal Board-Distress of plaintiff's goods	
under colour of engetment-Limitation .	A 2 N 3
(u) Limitation—Starting noint .	A 28 N 3
(iii) Suit for recovery of sum of monoy collected by distress	
in excess of the amount properly due-Limitation	A 28 N 2
(iv) Where illegal distress is a "misleasance or malfen-	
sanco" within Art. 36-Limitation	A 28 N 1
(b) Where illegal distress is doing act alloged to be in pursuanco	1 00 N 1
of any enactment-Limitation	A 28 N 1
Irregular distress	
(a) Suit for compensation (i) Limitation—Starting point.	A 28 N 3
(ii) Where irregular distress is a "misfeasance or mal-	11 20 14 0
feasince" within Art 36.—Lumitation	1 28 N 1
(b) Where irregular distress is "doing act alleged to be in pursu-	
anco of any enactment"-Limitation	1 28 N I
Distributed assets	
Distributed assets paid by executor or administrator-Refund of-	
Compulsion of - Suit for, under Indian Succession Act, Sa 360	
or 361-Limitation	.\ 43 N 2
District Court	
(a) Under Agia Tenancy Act—Appeal again-t decree of Revenue	
Court—Lunitation	A 152 N 24
(b) Under Civil P C.	
(i) Formal order not drawn up-lamitation-Starting	
point	A 152 N 6 152 N 2, 3, 6
(ii) Limitation—Starting point A (iii) Time for such appeal, whether extended by virtue of	152 8 2, 3, 6
S. 5. Lim. Act	A 152 N 8
(iv) Time occupied in prosecuting in wrong Court, whether	
excluded	A 152 N 9
(1) Time, whether extended an ground that Court was	
closed on last day of expiry of limitation for such	
appeal	A 152 N 7

Dividend —Suit for—By shateholder—Limitation	2782		GENERAL	INDEX			
Suit for—By shateholder—Limitation A 62 N 7 Divorce Act Appeal under (a) Against decree absolute made on Original Side of High Court —Limitation A 151 N 3 —Petition for dissolution of marriage—Delay in presenting or prosecuting petition (a) Objection on ground of delay will not hold good where marriage is ab initro void S 29 N 7 (b) Whether ground for disallowing petition S 29 N 7 —Suit for dissolution of marriage by person not governed by Divotce Act—Limitation Act applies S 29 N 7 —Suit under S 29 N 7 —Suit under S 29 N 7 —Suit under S 29 N 7 —Document S 29 N 7 —Cancellation of (a) Right of—Basis of (b) Suit for (ii) Based upon document—Limitation A 91 N 2 (ii) Based upon document—Limitation A 91 N 2 (ii) By third party to instrument—Limitation A 91 N 2 (iv) Dimitation—Special and general provisions of (v) On ground that document is not binding on plaintiff A 91 N 3 (vi) To declare invalidity of document and to cancel it —Limitation (vi) Whether necessary before reversioner can claim relief which he wants A 91 N 3 —Creating neither mortgage nor charge—Suit upon—Limitation—Starting point A 92 N 3 —Forged document A 92 N 4 A 93 N 1 (a) Suit for substantial relief in respect of—Limitation A 92 N 3 A 93 N 1 A 93 N 1 A 93 N 1 A 93 N 1 A 93 N 1 A 93 N 2	Dividend						
Divorce Act Appeal under (a) Against decree absolute made on Original Side of High Court (b) Applicability of Limitation Act to such appeal A 151 N 2 Petition for dissolution of marriage—Delay in presenting or prosecuting petition (a) Objection on ground of delay will not hold good where marriage is ab inito void (b) Whether ground for disallowing petition Subjection of marriage by person not governed by Divorce Act—Limitation of marriage by person not governed by Divorce Act—Limitation Act applies Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under A 10 N 15 Document Cancellation of (a) Right of—Basis of (b) Suit for (i) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation (iv) Limitation—Special and general provisions of (v) On ground that document is not binding on plaintiff (vi) To declare invalidity of document and to canced it —Limitation (vi) Whether necessary before reversioner can claim relief which the wants. (vi) Whether necessary before reversioner can claim relief which the wants. (vi) Whether necessary before reversioner can claim relief which the wants. (vi) Whether necessary before reversioner can claim relief which the wants. (vi) Whether necessary before reversioner can claim relief which the wants. (vi) Whether necessary before reversioner can claim relief which the wants. (vi) Whether necessary before reversioner can claim relief which the wants. (vi) Whether necessary before reversioner can claim relief which the wants. (vi) Whether necessary before reversioner can claim relief which the wants. (vi) Whether necessary before reversioner can claim relief which the wants. (vi) Whether necessary before reversioner can claim relief which the wants. (vi) Whether necessary before reversioner can claim relief which the wants. (vi) Whether necessary before reversioner can claim relief which the wants. (vi) Whether nec		shareholder-	_Limitation			_	A 69 N 7
—Appeal under (a) Against decroe absolute made on Original Side of High Court —Limitation (b) Applicability of Limitation Act to such appeal —Petition for dissolution of marriage—Delay in presenting or prosecuting patition (a) Objection on ground of delay will not hold good where marriage is ab initio void (b) Whether ground for disallowing petition —Suit for dissolution of marriage by person not governed by Divote Act—Limitation for marriage by person not governed by Divote Act—Limitation Act applies —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Cancellation of (a) Right of—Basis of (b) Suit for (i) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal —(ii) By third party to instrument—Limitation (iv) Limitation—Special and general provisions of (v) On ground that document is not binding on plaintiff —Limitation —Special and general provisions of (vi) To declare invalidity of document and to cancel it —Limitation —(vi) Whether necessary before reversioner can claim relief which the wants —(vi) Whether necessary before reversioner can claim relief which the wants —(vi) Whether necessary before reversioner can claim relief which the wants —(vi) Whether necessary before reversioner can claim relief which the wants —(vi) Whether necessary before reversioner can claim relief which the wants —(vi) Whether necessary before reversioner can claim relief which the wants —(vi) Whether necessary before reversioner can claim relief which the wants —Limitation —Document issued —(a) Forgery of—Declaration of—Sunt for—Limitation—Starting point —(b) What is —Forged document —(a) Suit for substantial relief in respect of—Limitation —(b) Suit to declare forgery (i) Attempt to enforce document against third party— —(ii) Declaration subservient or ancillary—Suit, whether (ii) Declaration subservient or ancillary—Suit, whether	-		2311-10001014	•••	•••	•••	21 02 11 1
(a) Against decree absolute made on Original Side of High Court —Limitation (b) Applicability of Limitation Act to such appeal —Petition for dissolution of marriage—Delay in presenting or prosecuting petition (a) Objection on ground of delay will not hold good where marriage is ab initio void (b) Whether ground for disallowing petition —Sult for dissolution of marriage by person not governed by Divotee Act—Limitation Act applies —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit pendens —Lis pendens —Lis pendens —Lis pendens —Lis pendens —Cancellation of (a) Right of—Basis of (b) Sult for (i) Based upon document—Limitation —(ii) Based upon document which plaintiff attacks as invalid and illegal —(iii) By third party to instrument—Limitation —(v) To declare invalidity of document and to cancel it—Limitation—Special and general provisions of (v) To declare invalidity of document and to cancel it—Limitation— —(vi) Whether necessary before reversioner can claim relief which he wants —(vi) Whether necessary before reversioner can claim relief which he wants —Creating neither mortgage nor charge—Suit upon—Limitation—Starting point —(b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation—Starting point (b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation (b) Suit to declare forgery (c) Agains (d) Declaration subservient or ancillary—Suit, whether (e) Whether Art. 93 applies (ii) Declaration substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian substantian sub							
A 151 N 2	(a) Against	decree absol	ute made on	Original St	de of High C	ourt	
Petition for dissolution of marriage—Delay in presenting or prosecuting petition (a) Objection on ground of delay will not hold good where marriage is ab initio void (b) Whether ground for dissolowing petition Suit for dissolution of marriage by person not governed by Divoice Act—Limitation Act applies Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under Suit under A 91 N 3 A 91 N 3 A 91 N 3 A 92 N 3 A 93 N 1 A 93 N 1 A 93 N 1 A 93 N 1 A 93 N 1 A 93 N 1 A 93 N 1	-Lim	itation	•••				
cuting petition (a) Objection on ground of delay will not hold good where marriage is ab inito void (b) Whether ground for disallowing petition —Suit for dissolution of marriage by person not governed by Divoice Act—Limitation Act applies —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Suit under —Alo N 15 —Suit under —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali N 3 —Ali							A 151 N 2
(a) Objection on ground of delay will not hold good where marriage is ab initio void (b) Whether ground for disallowing petition \$29 N 7 —Suit for dissolution of marriage by person not governed by Divotee Act—Limitation Act applies \$29 N 7 —Suit under \$29 N 7 —Suit under \$29 N 7 —Suit under \$29 N 7 —Suit under \$29 N 7 ——Doctrines \$29 N 7 ——Document \$29 N 7 ——Document \$29 N 7 ——Cancellation of (a) Right of —Basis of \$40 N 15 ——Cancellation of (a) Right of —Basis of \$491 N 2 (ii) Based upon document—Limitation \$491 N 2 (ii) Based upon document which plaintiff attacks as invalid and illegal \$491 N 3 (iii) By third party to instrument—Limitation \$491 N 3 (iv) Limitation—Special and general provisions of \$491 N 3 (v) To declare invalidity of document and to cancel it —Limitation \$491 N 3 (vi) Whether necessary before reversioner can claim relief which he wants \$491 N 3 ——Creating neither mortgage nor charge—Suit upon—Limitation \$491 N 3 ——Document issued (a) Forgery of—Declaration of—Sunt for—Limitation—Starting point \$492 N 3 ——Forged document \$492 N 3 ——Forged document \$492 N 3 ——Forged document \$492 N 3 ——Forged document \$492 N 3 ——Forged document \$492 N 3 ——Forged document \$492 N 3 ——Suit for substantial relief in respect of—Limitation \$492 N 3 ——Forged and substantial relief in respect of—Limitation \$492 N 3 ——Forged document \$492 N 3 ——Forged and substantial relief in respect of—Limitation \$492 N 3 ——Forged and substantial relief in respect of—Limitation \$492 N 3 ——Forged and substantial relief in respect of—Limitation \$492 N 3 ——Forged and substantial relief in respect of—Limitation \$492 N 3 ——Forged and substantial relief in respect of—Limitation \$492 N 3 ——Forged and substantial relief in respect of—Limitation \$492 N 3 ——Forged and substantial relief in respect of—Limitation \$492 N 3 ——Forged document \$492 N 3 ——Forged document .			marriage—L	day in pre	senting or p	ose-	
riage is ab initio void (b) Whether ground for disallowing petition S29 N 7 Sult for dissolution of marriage by person not governed by Divoice Act—Limitation Act applies S29 N 7 Sult under S29 N 7 S29 N 7 S29 N 7 S29 N 7 S29 N 7 S29 N 7 S29 N 7 S29 N 7 S29 N 7 S29 N 7 S29 N 7 Doctrines Lis pendens Lis pendens Cancellation of (a) Right of —Basis of (b) Sult for (i) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation (iv) Limitation—Special and general provisions of (v) Con ground that document is not binding on plaintiff (vi) To declare invalidity of document and to cancel it —Limitation (vi) Whether necessary before reversioner can claim relief which be wants (vi) Whether mecessary before reversioner can claim relief which he wants (c) When is a person entitled to cancel a document —Creating neither mortgage nor charge—Suit upon—Limitation Document issued (a) Forgery of—Declaration of—Sunt for—Lumitation—Starting point (b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation (a) Suit for substantial relief in respect of—Limitation (b) Suit to declare forgery (i) Attempt to enforce document against third party— Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether			-t 3-1t1	1 113			
(b) Whether ground for disallowing petition				t not nota i	good where i		S 29 N 7
Act—Limitation Act applies S 29 N7 Suit under S 29; A 1511 N2 Doctrines S 29; A 1511 N2 Lis pendens A 10 N 15 Document A 10 N 15 Document A 91 N 9 (a) Right of —Basis of A 91 N 9 (i) Based upon document—Limitation A 91 N 9 (ii) Based upon document which plaintiff attacks as invalid and illegal A 91 N 9 (iii) By third party to instrument—Limitation A 91 N 9 (iv) Limitation—Special and general provisions of (v) C n ground that document is not binding on plaintiff A 91 N 9 (vi) To declare invalidity of document and to cancel it —Limitation (vi) Whether necessary before reversioner can claim relief which the wants (vi) Whether necessary before reversioner can claim relief which the wants (o) When is a person entitled to cancel a document A 91 N 3 —Creating neither mortgage nor charge—Suit upon—Limitation A 92 N 3 —Torged document A 92 N 4 (a) Forgery of—Declaration of—Sunt for—Limitation—Starting point A 92 N 3 —Forged document A 92 N 3 (ii) Suit to declare forgery (i) Attempt to enforce document against third party— (ii) Attempt to enforce document against third party— (ii) Declaration subservient or ancillary—Suit, whether				etition			
Act—Limitation Act applies S 29 N7 Suit under S 29; A 1511 N2 Doctrines S 29; A 1511 N2 Lis pendens A 10 N 15 Document A 10 N 15 Document A 91 N 9 (a) Right of —Basis of A 91 N 9 (i) Based upon document—Limitation A 91 N 9 (ii) Based upon document which plaintiff attacks as invalid and illegal A 91 N 9 (iii) By third party to instrument—Limitation A 91 N 9 (iv) Limitation—Special and general provisions of (v) C n ground that document is not binding on plaintiff A 91 N 9 (vi) To declare invalidity of document and to cancel it —Limitation (vi) Whether necessary before reversioner can claim relief which the wants (vi) Whether necessary before reversioner can claim relief which the wants (o) When is a person entitled to cancel a document A 91 N 3 —Creating neither mortgage nor charge—Suit upon—Limitation A 92 N 3 —Torged document A 92 N 4 (a) Forgery of—Declaration of—Sunt for—Limitation—Starting point A 92 N 3 —Forged document A 92 N 3 (ii) Suit to declare forgery (i) Attempt to enforce document against third party— (ii) Attempt to enforce document against third party— (ii) Declaration subservient or ancillary—Suit, whether	-Suit for dissol	lution of mar	riage by pers	on not gove	arned by Div	0108	
Doctrines — Lis pendens — Lis pendens — Cancellation of (a) Right of —Basis of (b) Suft for (i) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation (iv) Limitation—Special and general provisions of (v) On ground that document is note binding on plaintiff (vi) To declare invalidity of document and to cancel it —Limitation (vi) Twintation—Special and general provisions of (vi) To declare invalidity of document and to cancel it —Limitation (vi) Whether necessary before reversioner can claim relief which the wants (c) When is a person entitled to cancel a document —Creating neither mortgage nor charge—Suit upon—Limitation —Document issued (a) Forgery of—Declaration of—Sunt for—Lamitation—Starting point (b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation (a) Suit for substantial relief in respect of—Limitation (b) Suit to declare forgery (i) Attempt to enforce document against third party— Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether					-		S 29 N 7
Doctrines — Ids pendens — Ids pendens — Ids pendens — Ids pendens — Ids pendens — Cancellation of (a) Right of — Basis of (b) Suit for (i) Based upon document—Limitation — (ii) Based upon document which plaintiff attacks as invalid and illegal — (iii) By third party to instrument—Limitation — (iv) Limitation—Special and general provisions of — (iv) On ground that document is not binding on plaintiff — Unimitation—Special and general provisions of — (vi) To declare invalidity of document and to cancel it — Limitation — (vi) Whether necessary before reversioner can claim relief — Which he wants — (c) When is a person entitled to cancel a document — Creating neither mortgage nor charge—Suit upon—Limitation — Document issued — (a) Forgery of—Declaration of—Suit for—Limitation—Starting point — (b) What is — Forged document — (a) Suit for substantial relief in respect of—Limitation — (a) Suit for substantial relief in respect of—Limitation — (b) Suit to declare forgery — (i) Attempt to enforce document against third party— — Whether Art. 93 applies — (ii) Declaration subservient or ancillary—Suit, whether	Suit under						C 40 17 7
Doctrines	,,,		+ · · · · · ·	• • • • • • • • • • • • • • • • • • • •	•••	 	
Doctrines Lis pendens Lis pendens Lis pendens Noument Cancellation of (a) Right of—Basis of (b) But for (i) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation (iv) Limitation—Special and general provisions of (v) To declare invalidity of document and to cancel it —Limitation (vi) To declare invalidity of document and to cancel it —Limitation (vi) Whether necessary before reversioner can claim relief which he wants (c) When is a person entitled to cancel a document —Creating neither mortgage nor charge—Suit upon—Limitation Document issued (a) Forgery of—Declaration of—Sunt for—Limitation—Starting point (b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation (b) Suit to declare forgery (c) Attempt to enforce document against third party— Whether Art. 93 applies (d) Declaration subservient or ancillary—Suit, whether				•			S 29 N 7
Document —Cancellation of (a) Right of—Basis of (b) Suit for (i) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation (iv) Limitation—Special and general provisions of (v) On ground that document is not binding on plaintiff (vi) To declare invalidity of document and to cancel it —Limitation—Special and general provisions of (vi) To declare invalidity of document and to cancel it —Limitation—(vii) Whether necessary before reversioner can claim relief which he wants (c) When is a person entitled to cancel a document —Creating neither mortgage nor charge—Suit upon—Limitation—Starting point (a) Forgery of—Declaration of—Suit for—Lomitation—Starting point (b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation A 92; A 92 N 2 (i) Attempt to enforce document against third party— (ii) Attempt to enforce document against third party— (ii) Declaration subservient or ancillary—Suit, whether A 93 N 1 A 93 N 1				** *	•••	•••	
Document Cancellation of (a) Right of —Basis of							A 10 N 15
Cancellation of (a) Right of —Basis of	-	***	•••	•••	•••	•••	21 24 11 -
(a) Right of—Basis of (b) Sut tor (ii) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation (iv) Limitation—Special and general provisions of (iv) On ground that document is not binding on plaintiff (iv) To declare invalidity of document and to canced it —Limitation— (vi) Whether necessary before reversioner can claim relief which he wants (c) When is a person entitled to cancel a document —Creating neither mortgage nor charge—Suit upon—Limitation—Starting point (a) Forgery of—Declaration of—Sunt for—Lomitation—Starting point (b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation (b) Suit to declare forgery (i) Attempt to enforce document against third party— (ii) Declaration subservient or ancillary—Suit, whether A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 92 N 4 A 92 N 4 A 92 N 3							
(b) Suit for (i) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation (iv) Limitation—Special and general provisions of (v) On ground that document is not binding on plaintiff (vi) To declare invalidity of document and to cancel it —Limitation (vii) Whether necessary before reversioner can claim relief which the wants (c) When is a person entitled to cancel a document (c) When is a person entitled to cancel a document Creating neither mortgage nor charge—Suit upon—Limitation Document issued (a) Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is Forged document (a) Suit for substantial relief in respect of—Limitation (i) Stit to declare forgery (i) Attempt to enforce document against third party— (ii) Declaration subservient or ancillary—Suit, whether A 93 N 1 A 93 N 1							1 01 N 2
(i) Based upon document—Limitation A 91 N 3 (ii) Based upon document which plaintiff attacks as invalid and illegal A 91 N 3 (iii) By third party to instrument—Limitation A 91 N 3 (iv) Limitation—Special and general provisions of (v) On ground that document is not binding on plaintiff (vi) To declare invalidity of document and to cancel it —Limitation (vii) Whether necessary before reversioner can claim relief which he wants (c) When is a person entitled to cancel a document A 91 N 3 —Creating neither mortgage nor charge—Suit upon—Limitation A 91 N 3 —Torget of —Declaration of—Sunt for—Lamitation—Starting point A 92 N 3 —Forged document (a) Suit for substantial relief in respect of—Limitation A 92; A 92 N 3 (b) What is A 92 N 3 (ii) Suit for substantial relief in respect of—Limitation A 92; A 93 N 1 (iii) Declaration subservient or ancillary—Suit, whether A 93 N 2		-Basis of	•••	•••	•••	•••	70771
(ii) Based upon document which plaintiff attacks as invalid and illegal	***		71				A 91 N 3
and illegal (ii) By third party to instrument—Limitation (iv) Limitation—Special and general provisions of (v) On ground that document is not binding on plaintiff. (vi) To declare invalidity of document and to cancel it —Limitation. (vii) Whether necessary before reversioner can claim relief which he wants. (c) When is a person entitled to cancel a document —Creating neither mortgage nor charge—Suit upon—Limitation —Document issued (a) Porgery of—Declaration of—Suit for—Limitation—Starting point (b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation (b) Suit to declare forgery (i) Attempt to enforce document against third party— Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether A 93 N 1 A 93 N 2					ttaaba aa laa	-113	
(ii) By third party to instrument—Limitation A 91 N 9 A 91 N 1 (v) Limitation—Special and general provisions of (v) On ground that document is not binding on plaintiff (vi) To declare invalidity of declament and to cancel it —Limitation (vii) Whether necessary before reversioner can claim relief which be wants (c) When is a person entitled to cancel a document A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N 3 A 91 N				•	LINCKS ES INV		A 91 N 2
(vy Limitation—Special and general provisions of (v) On ground that document is not binding on plaintiff (vi) To declare invalidity of document and to cancel it —Limitation (vii) Whether necessary before reversioner can claim relief which he wants (c) When is a person entitled to cancel a document —Creating neither mortgage nor charge—Suit upon—Limitation —Document issued (a) Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation (a) Suit for substantial relief in respect of—Limitation (b) Suit to declare forgery (c) Attempt to enforce document against third party— Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether					tion		A 91 N 2
(vi) To declare invalidity of document and to cancel it —Limitation (vii) Whether necessary before reversioner can claim relief which he wants (c) When is a person entitled to cancel a document —Creating neither mortgage nor charge—Suit upon—Limitation —Document issued (a) Forgery of—Declaration of—Sunt for—Lomitation—Starting point (b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation (b) Suit to declare forgery (i) Attempt to enforce document against third party— Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether A 93 N 1	(17) Li	imitation—S	pecial and ger	eral provisi	ions of		A 91 N 3
-Limitation A 91 N d	(v) Oı	a ground tha	t document i	not bindin	g on plaintif		
(vii) Whether necessary before reversioner can claim relief which he wants (c) When is a person entitled to cancel a document —Creating neither mortgage nor charge—Suit upon—Limitation —Document issued (a) Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation (b) Suit to declare forgery (i) Attempt to enforce document against third party— Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether					nd to cance	1 16	A 91 N 3
which he wants A 91 N 3 (c) When is a person entitled to cancel a document A 91 N 3 —Creating neither mortgage nor charge—Suit upon—Limitation A 132 N 2 —Document issued (a) Forgery of—Declaration of—Sunt for—Lomitation—Starting point A 92 N 4 (b) What is A 92 N 3 —Forged document (a) Suit for substantial telief in respect of—Limitation A 92; A 93 N 2 (b) Suit to declare forgery (i) Attempt to enforce document against third party—Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether					can claim re	lief	
Creating neither mortgage nor charge—Suit upon—Limitation A 132 N 2 —Document issued (a) Forgery of—Declaration of—Sunt for—Limitation—Starting point	v	vhich he want	s	•••	•••		A 91 N 3
Document issued (a) Fergery of—Declaration of—Suit for—Lamitation—Starting point						***	132 N 2
(a) Forgery of.—Declaration of.—Suit for.—Lomitation.—Starting point			nor charge—	Suit upon—	Limitation	•••	V 1022
point			t Ct	tom Lamite	tion Start	ino	
(b) What is		OI-Deciring	100 OI—SUIE	tor—Limite	a 1011-15041 2		A 92 N 4
(a) Suit for substantial relief in respect of Limitation A 92; A 93 N 1 (b) Suit to declare forgery (i) Attempt to enforce document against third party— Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether A 93 N 2						•••	A 92 N 3
(i) Attempt to enforce document against third party— Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether A 93 N 2	-Forged docum	ent					A 93 N 2
(i) Attempt to enforce document against third party— Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether A 93 N 2	(a) Suit for	substantial 1	elief in respe	ct of—Limi	tation	A 92;	2. 44
Whether Art. 93 applies	(b) Suit to (rectare forger	·v				
(ii) Declaration subservient or ancillary—Suit, whether	7	Vhether Art.	93 applies		***	•••	
	(iı) De	claration su	bservient or	ancillary-	-Suit, wheth	er	A 93 N 2

one for declaration of forgery

•--

meaning of

OLUMAN INDIX	2100
Document-Forged document-Suit to declare forgery-(Contd.)	
(iv) In respect of registered document-Limitation - Start-	
ing point	A 92 N 4
(v) Limitation	92; A 92 N 2
Hatchitta document-Suit on-Document stamped and signed by	
debtor containing statement of adjustment of accounts and con-	
sisting unqualified promise to pay-Limitation	A 115 N 3
- Material alteration in document containing acknowledgment after	
it is given—Document, if can be relied on as saving limitation under S 19	S 19 N 67
37	A 91 N 16
Mortgage deedWhether specific moveable property	A 48 N 3
Not binding on particular person-Declaration of Suit for-Limitation	4 01 37 0
	A 91 N 2
—Not cancelled—Suit for relief which is not inconsistent with docu- ment—Whether harred, if suit for cancellation of document is	
time.barred	A 91 N 3
—Not intended to be operative—Suit by executant for possession of	11 51 11 5
property sold—Limitation	A 91 N 3
	11 01 11 0
(100)	1 07 37 10
(a) Suit for—Whether suit for relief on ground of fraud (b) Suit for rectification on ground of mutual mistake under	A 95 N 10
Specific Relief Act, S. 31—Limitation	A 96 N 4
(a) "Registered"—Meaning of	A 116 N 5
(b) Rent due under—Suit for—Limitation	A 110 N 5
(c) Royalty under, recovery of—Suit for — Lamitation	A 116 N 9
(d) Sale certificate granted to purchaser in court auction under	
provisions of Civil P C - Fact that copy of certificate is	
forwarded to registering officer and duly filed, whether	1 10 N 11
makes certificate a registered document (e) What is — More attestation of deed before kazes, whether	A 10 N 11
amounts to registered document within Art 116	A 116 N 5
- Setting aside of	11 110 11 0
(a) Right of—Basis of	A 91 N 2
(b) Suit for	27 01 14 2
	A 91 N 19
(i) Burden of proof (ii) By person not party to document for cancelling or	
setting it aside-Whether suit for reseission of con-	
tract	A 114 N 1
(iii) By third party to instrument—Limitation (iv) Limitation—Starting point A 91, A 91 N	A 91 N 2
(v) On ground of its having been obtained by undue	2, A 91 N 20
influence—Cause of action, when arises	S 9 N 7
(vi) Special and general provisions of limitation A	91, A 91 N 2
(vii) Suit for declaration that document is not binding on	
plaintiff—Limitation	A 91 N 2
(vin) Whether necessary before reversioner can claim relief	
which he wants (1x) Whether time extended on ground of disability of	A 91 N 4
plaintiff extended on ground of disquitty of	A 91 N 18
(c) When is a person entitled to set aside document	A 91 N 3
	0

A 151 N

(a) Against decree absolute made on Original Side of High Court

Divorce Act -Appeal under

(b) Applicability of Limitation Act to such appeal A 151 Notes of the conting petition (a) Objection on ground of delay will not hold good where marriage is ab initio void (b) Whether ground for disallowing petition See See Note of dissolution of marriage by person not governed by Divorce Act—Limitation Act applies See Note of Appeal from decree—Limitation applicable See Note of the Control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control o	T.imita			ou original	Dido of His	ii Obatt	1 151 X
Petition for dissolution of marriage—Delay in presenting or prosecuting potition (a) Objection on ground of delay will not hold good where marriago is ab initio void (b) Whether ground for dissillowing petition Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepinary Sepin			itation Ac	t to smale a		•••	A 151 N
cuting petition (a) Objection on ground of delay will not hold good where marriago is ab inito void (b) Whether ground for disallowing petition Sept Models of the property of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition of the petition							A 101 P
(a) Objection on ground of delay will not hold good where marriago is ab inito void (b) Whether ground for disallowing petition S 29 N Sut for dissolution of marriage by person not governed by Divorce Act—Limitation Act applies S 29 N Limitation Act applies S 29 N (b) Limitation Act, if applies S 29 N (c) Provisions of Limitation Act do not apply S 29 N (d) Provisions of Limitation Act do not apply S 29 N Doctrines A 10 N Document A 91 N (i) Based upon document—Limitation A 91 N (ii) Based upon document which plaintiff attacks as invalid and sillegal A 91 N (iii) By third party to instrument—Limitation A 91 N (vi) Whether necessary before reversioner can claim relief which he wants (c) When is a person entitled to cancel a document A 91 N (ii) Whether mortgage nor charge—Suit upon—Limitation A 132 N — Document issued A 92 N (a) Forgery of—Declaration of—Suit for—Limitation—Starting point A 93 N (b) What is A 93 N (c) Whether act 93 applies A 93 N (ii) Declaration subservient or ancillary—Suit, whether one for declaration of forgery (iii) In respect of domment attempted to be enforced Limitation of attempt a 3 a 93 N (iii) In respect of domment attempted to be enforced Limitation of of attempt a 3 a 93 N A 93 N		nation of	marriage-	-Delay in	presenting o	r prose-	
riago is ab inito void (b) Whether ground for disallowing petition Sut for dissolution of marriage by person not governed by Divorce Act—Limitation Act applies Sut under (a) Appeal from decreo—Limitation applicable (b) Limitation Act, if applies Substitution Act, if applies Substitution Act, if applies Substitution Act, if applies Lis pendens Lis pendens Document —Cancellation of (a) Right of—Basis of (b) Suit for (i) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation (vi) Whether necessary before reversioner can claim relief which he wants (c) When is a person entitled to cancel a document —Creating neither mortgage nor charge—Suit upon—Limitation—Starting point (b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation—Starting point (b) What is (ii) Declaration subservient or ancillary—Suit, whether one for declaration of longery (iii) In respect of domment attempted to be enforced —Limitation—Starting point—"Date of attempt." A 93 N 2 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93		m grauni	of delay	rill not ho	Id stood mbo	re mar.	
(b) Whether ground for disallowing petition	riaga is a	h instan v	oid	WIII HOU HO	in Book who	10 mar-	S 29 N
Sut for dissolution of marriage by person not governed by Divorce Act—Limitation Act applies Sut under (a) Appeal from decreo—Limitation applicable (b) Limitation Act, if applies (c) Provisions of Limitation Act do not apply Doctrines Lis pendens Lis pendens Cancellation of (a) Right of—Basis of (b) Suit for (i) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation A 91 N (vi) Whether necessary before reversioner can claim relief which he wants (vii) Whether mortgage nor charge—Suit upon—Limitation Document issued (a) Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is Forged document (a) Suit for substantial relief in respect of—Limitation—Starting point (b) What is Forged document (a) Suit for substantial relief in respect of—Limitation—Starting point (b) What is Forged document (a) Suit for substantial relief in respect of—Limitation—Starting point (b) What is Forged document (a) Suit for substantial relief in respect of—Limitation—Starting point (b) What is Forged document (a) Suit for substantial relief in respect of—Limitation—Starting point one for declaration of lorgery (ii) In respect of domment attempted to be enforced —Limitation—Starting point—"Date of attempt." A 93 N 2 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93 N 3 A 93				g netition	•••	•••	
Act—Limitation Act applies Sut under (a) Appeal from decree—Limitation applicable (b) Limitation Act, if applies (c) Provisions of Limitation Act do not apply Bootrines Lis pendens Cancellation of (a) Right of—Basis of (b) Sait for (i) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation A 91 N Limitation (vi) Whether necessary before reversioner can claim relief which he wants (c) When is a person entitled to cancel a document Creating neither mortgage nor charge—Suit upon—Limitation Document issued (a) Forgery of—Decluration of—Suit for—Limitation—Starting point (b) What is Forged document (a) Suit for substantial relief in respect of—Limitation (b) Suit to declare forgery (i) Attempt to enforce document against third party—Whether Act, 93 applies (ii) Declaration subservient or ancillary—Suit, whether one for declaration of forgery (iii) In respect of domment attempted to be enforced —Limitation—Starting point—"Date of attempt, one for declaration of forgery (iii) In respect of domment attempted to be enforced —Limitation—Starting point—"Date of attempt, one for declaration of forgery (iii) In respect of domment attempted to be enforced —Limitation—Starting point—"Date of attempt, one for declaration of orgery (iii) In respect of domment attempted to be enforced							-
Sut under (a) Appeal from decree—Limitation applicable (b) Limitation Act, if applies (c) Provisions of Limitation Act do not apply (c) Provisions of Limitation Act do not apply Doctrines — Lis pendens — Lis pendens — Cancellation of (a) Right of—Basis of (b) Suit for (i) Based upon document—Limitation — (ii) Based upon document which plaintiff attacks as invalid and illegal — (iii) By third party to instrument—Limitation — A 91 N — Limitation — (vii) Whether necessary before reversioner can claim relief which he wants — (c) When is a person entitled to cancel a document — Creating neither mortgage nor charge—Suit upon—Limitation — Document issued (a) Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is — Forged document (a) Suit for substantial relief in respect of—Limitation — Starting point (b) What is — Forged document (a) Suit for substantial relief in respect of—Limitation A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N	Act_Limitatio	n Aet ant	itiago by p	erson nor g			S 23 N
(a) Appeal from decree—Limitation applicable (b) Limitation Act, if applies (c) Provisions of Limitation Act do not apply (d) Provisions of Limitation Act do not apply (e) Provisions of Limitation Act do not apply (e) Provisions of Limitation Act do not apply (f) Provisions of Limitation Act do not apply (f) Provisions of Limitation Act do not apply (h) Substitute (a) Raped upon document—Limitation (a) Right of—Bass of (b) Suit for (c) Based upon document—Limitation (d) Based upon document—Limitation (ii) Based upon document—Limitation (iii) Based upon document—Limitation (iii) Based upon document—Limitation (iii) Based upon document—Limitation (iii) By third party to instrument—Limitation (iii) By third party to instrument—Limitation (iv) Whether necessary before reversioner can claim relief which he wants (iv) Whether necessary before reversioner can claim relief which he wants (c) When is a person entitled to cancel a document (a) Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation (b) Suit to declare forgery (i) Attempt to enforce document against third party— (ii) Declaration subservient or ancillary—Suit, whether (iii) In respect of document attempted to be enforced (iii) In respect of document attempted to be calcared and an act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and act and				•••	•••	•••	
(a) Limitation Act, if applies S 29, A 151 M S 23 N Doctrines Lis pendens A 10 N Document —Cancellation of (a) Right of—Basis of A 91 N (b) Suit for (i) Based upon document—Limitation A 91 N (ii) Based upon document which plaintiff attacks as invalid and illegal A 91 N (iii) By third party to instrument—Limitation A 91 N (vi) Whether necessary before reversioner can claim relief which he wants A 91 N (vi) Whether necessary before reversioner can claim relief which he wants A 91 N (c) When is a person entitled to cancel a document A 91 N —Creating neither mortgage nor charge—Suit upon—Limitation A 193 N —Therefore of the mortgage of the cancel a document A 193 N —Therefore of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of attempt.		n decrea-	_Limitatio	n applicabl	a		S 29 N
Comment				or all prices	• •••	S 29	A 151 N
Document —Cancellation of (a) Right of—Basis of (i) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation (vi) Whether necessary before reversioner can claim relief which he wants (e) When is a person entitled to cancel a document —Creating neither mortgage nor charge—Suit upon—Limitation—Starting point (b) What is —Forged document (a) Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation—A 92, A 93 N 192, N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193 N 193				o not apply	•••		S 23 N
Document —Cancellation of (a) Right of—Basis of (b) Suit for (i) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation (vii) Whether necessary before reversioner can claim relief which he wants (c) When is a person entitled to cancel a document —Creating neither mortgage nor charge—Suit upon—Limitation —Document issued (a) Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation—Starting point (b) What is — —Forged document (a) Suit for substantial relief in respect of—Limitation—Starting point (b) What is — —Forged document (a) Suit for substantial relief in respect of—Limitation—Starting point (b) What is — —Forged document (a) Suit for substantial relief in respect of—Limitation—Starting point (b) Mint is — —Forged document (a) Suit for substantial relief in respect of—Limitation—Starting point—Suit, whether one for declaration of forgery (ii) In respect of do.mment attempted to be enforced —Limitation—Starting point—"Date of attempt. (iii) In respect of do.mment attempted to be enforced —Limitation—Starting point—"Date of attempt.					•••		
Document Cancellation of (a) Right of—Basis of							4 10 N
Cancellation of (a) Right of—Basis of (b) Suit for (i) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation (ivi) Whether necessary before reversioner can claim relief which he wants (c) When is a person entitled to cancel a document —Creating neither mortgage nor charge—Suit upon—Limitation (a) Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is —Forgod document (a) Suit for substantial relief in respect of—Limitation (b) Suit to declare forgery (c) A 93 N (d) Declaration subservient or ancillary—Suit, whether one for declaration of forgery (u) In respect of domment attempted to be enforced—Limitation of attempt. (u) In respect of domment attempted to be enforced—Limitation of of attempt. (u) In respect of domment attempted to be calcred—Limitation—Suit A 93 N A 93 N		••	•••	•••	•••	•••	
(a) Right of—Basis of (b) Suit for (ii) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation (iii) By third party to instrument—Limitation —Limitation (vi) Whether necessary before reversioner can claim relief which he wants (c) When is a person entitled to cancel a document —Creating neither mortgage nor charge—Suit upon—Limitation—Starting point (b) What is —Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is —Forged document (a) Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is —Forged document (a) Suit for substantial relief in respect of—Limitation (b) Suit to declare forgery (c) Attempt to enforce document against third party—Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether one for declaration of forgery (iii) In respect of domement attempted to be enforced—Limitation—Starting point—"Date of attempt. (iii) Based upon document—Limitation A 91 N A 91 N A 91 N A 91 N	Document						
(b) Sait for (i) Based upon document—Limitation (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation —Limitation (vi) Whether necessary before reversioner can claim relief which he wants (vii) Whether necessary before reversioner can claim relief which he wants —Creating neither mortgage nor charge—Sait upon—Limitation —Document issued (a) Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is —Forgol document (a) Suit for substantial relief in respect of—Limitation (b) Siit to declare forgery (i) Attempt to enforce document against third party—Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether one for declaration of forgery (iii) In respect of domement attempted to be enforced —Limitation—Starting point—"Date of attempt. A 93 N.							
(i) Based upon document—Limitation A 91 N (ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 92 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N A 93 N	(a) Right of—1	Basis of	•••	•••	•••	***	A 91 N
(ii) Based upon document which plaintiff attacks as invalid and illegal (iii) By third party to instrument—Limitation (iii) By third party to instrument—Limitation A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91	(b) Suit for						
(ii) Based upon document which plaintiff attacks as invalid and illegal	(1) Base	d upon de	ocument	Limitation	•••	•••	A 91 N
and illegal						invalid	
A 91 N -Limitation (vi) Whether necessary before reversioner can claim relief which he wants (e) When is a person entitled to cancel a document -Creating neither mortgage nor charge—Suit upon—Limitation -Decument issued (a) Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is -Forged document (a) Suit for substantial relief in respect of—Limitation (b) Suit to declare forgery (c) A 93 N (i) Declaration subservient or ancillary—Suit, whether one for declaration of forgery (ii) In respect of domment attempted to be enforced —Limitation—Starting point—"Date of attempt." A 93 N A 93 N				***	***		A 91 N
April	(iii) By t	hird part	v to instru	ment-Lim	itation	•••	A 91 N
-Limitation A 91 N (vi) Whether necessary before reversioner can claim relief which he wants (e) When is a person entilled to cancel a document A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N A 91 N	2.35.	• • •		:			A 91 N
(vi) Whether necessary betore reversioner can claim relief which he wants (e) When is a person entitled to cancel a document — Creating neither mortgage nor charge—Suit upon—Limitation — Document issued (a) Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is — Forged document (i) Whether Art. 93 applies (ii) Declaration subscartial relief in respect of—Limitation (i) Nettempt to enforce document against third party— Whether Art. 93 applies (ii) Declaration subscrient or ancillary—Suit, whether one for declaration of forgery (iii) In respect of domment attempted to be enforced —Limitation—Starting point—"Date of attempt (iii) The subscription of forgery (iii) In respect of domment attempted to be enforced —Limitation—Starting point—"Date of attempt A 93 N	•						A 91 M
(vi) Whether necessary betore reversioner can claim relief which he wants (e) When is a person entitled to cancel a document — Creating neither mortgage nor charge—Suit upon—Limitation — Document issued (a) Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is — Forged document (i) Whether Art. 93 applies (ii) Declaration subscartial relief in respect of—Limitation (i) Nettempt to enforce document against third party— Whether Art. 93 applies (ii) Declaration subscrient or ancillary—Suit, whether one for declaration of forgery (iii) In respect of domment attempted to be enforced —Limitation—Starting point—"Date of attempt (iii) The subscription of forgery (iii) In respect of domment attempted to be enforced —Limitation—Starting point—"Date of attempt A 93 N	•			-			t 01 N
(c) When is a person entitled to cancel a document	L	imitation		•••	•••	17.4	
(c) When is a person entitled to cancel a document A 91 N — Creating neither mortgage nor charge—Suit upon—Limitation — A 132 N — Document issued (a) Forgery of—Declaration of—Suit for—Limitation—Starting point	(vii) Whet	her neces	sary befor	e reversion	er ean clain		A 91 N
Creating neither mortgage nor charge—Suit upon—Limitation A 132 N Document issued (a) Forgery of—Declaration of—Suit for—Limitation—Starting point					***		A 91 N
Creating detrief motigage that charge—Suit upon—Financials Decounent issued (a) Forgery of—Declaration of—Suit for—Limitation—Starting point (b) What is							A 132 N
(a) Forgery of—Declaration of—Suit for—Limitation—Starting point			nor charge	-Suit upor	1-11111111111111		
(b) What is			tion of C	air fan Tir	nitation S	arting	
(b) What is		-Decrura	11011 015	int for—Lin	miation—D		A 93 N
Forged document (a) Suit for substantial relief in respect of—Limitation (b) Suit to declare forgery (i) Attempt to enforce document against third party— Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether one for declaration of forgery (iu) In respect of document attempted to be enforced—Limitation—Strating point—"Date of attempt., 23, A 93 N 3			• •	•••	***		7 33 N
(a) Suit for substantial relief in respect of Limitation (b) Suit to declare forgery (i) Attempt to enforce document against third party— Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether one for declaration of forgery (iii) In respect of do.mment attempted to be enforced —Limitation—Starting point—"Date of attempt." (iii) A 93 N 3			•••	•••	***		
(h) Suit to declare forgery (i) Attempt to enforce document against third party— Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether one for declaration of forgery (iu) In respect of do.mnent attempted to be enforced —Limitation—Strating point—"Date of attempt. 103. A 93 N 2			elief in re	meet of—Li	mitation	A 92	Y 33 V
Whether Art. 93 applies (ii) Declaration subservient or ancillary—Suit, whether one for declaration of lorgery (iii) In respect of domment attempted to be enforced —Limitation—Strating point—"Date of attempt." (iii) A 93 N 2	(b) Suit to deel	are force	rv	-			
(i) Declaration subservient or ancillary—Suit, whether one for declaration of lorgery (ii) In respect of domment attempted to be enforced—Limitation—Starting point—"Date of attempt." 103. A 93 N 3					est third pe	rty—	4 93 N
one for declaration of lorgery (iii) In respect of do unment attempted to be enforced —Limitation—Starting point—"Date of attempt," 102. A 93 N 2	Whe	ther Art.	93 applies	•••		-41-05	
(ui) In respect of do.ment attempted to be enforced —Limitation—Starting point—"Date of attempt." 103. 4 93 N	(ii) Decla	ration s	ibservient	or ancillar	y-Suit, WI	letner	A 93 N 2
-Limitation-Starting point- Date of attempts, 03, 4 93 N	(m) In a	tor decla	ration of	orgery	to be en	orced	
meaning of	(11) In F	imitation.	_Starting	ncint_'D	ate of atte	npt,"	. 02 7 9
	mea	ning of				A 93;	A 93 M

		C	3 fan	/0	L. 4.7 1	
Document_Forge	d document	-Suit to	deciare 101	gery-10	onta.)	
	respect of re	gistered do		imitation.	-Start-	4 00 37 6
	ng point	•••	•••	•••	• • • • • • • • • • • • • • • • • • • •	A 92 N 4 92, A 92 N 2
Hatchitta doc	imitation	D			and Lone	92, A 92 N 2
Hatchitta doc	ument—Suit ining stateme	ou—Docu	ment staru	eu nuu si	gned by	
	ining stateme dified promis					A 115 N 3
						V IIO H 9
- Material alter	ation in docu Document, i	ment cont	aining acki	lowledgme	nt atter	
under S. 19		can be r	eneu nn as		причон	S 19 N 67
	•••	•••	•••	•••	• • •	
Meaning of		•••	•••	•••	•••	A 91 N 16
Mortgage dec					***	A 48 N 3
Not binding or	n particular p	erson $-$ De	claration nf	—Suit for	Limi-	
tation	***	•••	•••	•••	•••	A 91 N 2
Not cancelled						
	ther barred,	ıf suit for	cancellation	n of docu	ment is	
time-barred	•••	•••		***	•••	A 91 N 3
-Not intended			y executant	for posse	ssion of	
property sole	d—Limitatio	n	***	•••	•••	A 91 N 3
Rectification	of					
(a) Suit for	-Whether s	uit for reli-	ef on ground	of fraud		A 95 N 10
(b) Suit for	r rectification	on groun	d of mutua	al mistake	under	
Specifi	ic Relief Act,	S. 31-Li	nıtation	***	•••	A 96 N 4
Registered do	oument					
(a) "Regist	ered"—Mean	ing of	•••	•••	•••	A 116 N 5
	ie under—Su			***	•••	A 110 N 5
	under, recov				•••	A 116 N 9
	tificate grant					
provis	ions of Civil 1	P. C. — F	ict that con	y of certi	ficate is	
	ded to regis				wnerner.	
	certificate a s — Mere at				mbathan	A 10 N 11
	nts to register				Anemer	A 116 N 5
Setting aside		cu documo		14 110	•••	V 110 W 9
	f—Basis of					A 91 N 2
(b) Suit for		•••	•••	***	•••	A SI N 2
	Burden of proc	of	•••			A 91 N 19
(ii) F	By person no	t party to	document	for cance	lling or	** 01 1 15
	setting it asi					
	tract		•••	•••		A 114 N 1
(m) <u>I</u>	By third party amitation—S	to instru	ment—Luui	tation		A 91 N 2
(iv) I	imitation—S	tarting poi	nt	A 91.	A 91 N 2	A 91 N 20
	n ground of influence—Ca				undue	
	pecial and ge				., .	S9N7 1.A91N2
	Suit for decla				ດີເກດເຄ	1. A 91 N 2
	plaintiff-Li		•••	•••		A 91 N 2
7 (iii r)	Vhether nece	ssary befor	e reversion	er can clai	m relief	51 14 3
	which he was	nts	•••	•••	***	A 91 N 4
	Whether tun	o extende	l on ginund	l of disal	olity of	
	plaintiff			•:•	•••	A 91 N 18
(c) When	is a person en	titled to se	er aside doci	ment	•••	A 91 N 3

Document—(Conid.)	,
Sham or inoperative	
(a) Cancellation, whether necessary to one party to it (b) Declaration that such document is sham—Suit for—Limi-	A 91 N 3
tation	A 91 N 3
Suit based upon	
(a) Limitation	A 91 N 2
(b) Suit where plaintiff attacks particular clause as invalid and	
illegal—Limitation	A 91 N 2
Valid document	
(a) Remedy of person not party to document	A 91 N 3
(b) Suit by third party to declare that document is not binding	
on him - Limitation	A 91 N 3
(c) When can be cancelled by third party	A 91 N 3
(d) Whother can be cancelled	A 91 N 3
Void document	
(a) Suit to declare document void and to cancel it-Limitation:	A 91 N 3
(b) Third party to document-Failure of third party to declare	
that document is not binding on him—Effect of	A 91 N 3
(c) Whether must be set aside by party to it for obtaining relief	9
which he claims	A 91 N 3
	4 01 17 9
(a) Setting aside of—Suit for—Limitation	A 91 N 3
(b) Whether must be set aside by one party to it before obtain-	A 91 N 3
ing other relief which he claims	A 48 N 3
Whother specific moveable property	A 48 N 3
Dower	
——Claim for	
(a) Whether can be disposed of by wife by transfer or will	A 103 N 3
(b) Whether forms part of wife's estate and passes on her death	
to her heirs	A 103 N 3
Deferred dower	
(a) Suit for	
(1) By legal representatives of wife-Limitation-Where	1
contract to pay dower is registered	A 104 N 1 A 104
(11) By Mahomedan—Limitation	V 10.
(iii) By Mahomedan where deferred dower becomes payable	
by dissolution of marriage by bushand propouncing	
talak and further executing talaknamah wherein he	A 104 N 1
agrees to pay dower amount by monthly instalments:	A 103 N 1
(b) What is	A 101 N 1
(c) When payable	A 101 N I
Deferred dower and policy of life insurance compared	A lor K
Deferred dower in Mahomedan law Effect of, on bushand's	A 101 N 1
power to dissolve marriago at will	A lot 2.
	A 103 N 2
(a) Meaning of	4 103 N P
(b) Suit for—Limitation—Starting point	A 103 N 3
(c) Suit for, by legal representatives of wife—Limitation	
(d) Suit for, by Mahomedan	
(1) Contract of dower on behalf of or in favour of minor, whether binding on guardian personally or on person	
for whom contract is made	A 103 N 12
TOT TOTAL COLLEGE AS ITINGO	

Dower-Exigible dower-Suit for, by Mahomedan-(Contd.)	
(ii) Contract of dower on behalf of or in favour of minor,	
whether enforceable by minor	A 103 N 12
(iii) Demand and refusal for portion of dower, whether sets	
timo running also for the rest	A 103 N 6
(iv) Demand and refusal necessary to start time running	
-Meaning of such "demand and refusal"-Illustra-	
tions	A 103 N 6
(v) Dower in Mahomedan law — What is — Payment of	
Lassi or advance given to hisband at the time of mar-	
riage and which is repayable to wife on dissolution of	1 -00 17 1
marriage by death or divorce, whether dower	A 103 N 1
(vi) For balance of dower debt due where wife is placed	
by husband in possession of property for payment of dower and upon husband's death is subsequently dis-	1
dower and upon husband's death is subsequently dis-	A 103 N 9
possessed by his legal representatives—Limitation (vii) Husband appointed executor of wife's will whereby	W 109 M 9
she bequeaths her right to dower to certain persons,	
whether can take advantage of limitation prescribed	
for suit for such dower	A 103 N 8
(viii) Limitation	A 102
(ix) Marriage under Mahomedan law, when dissolved by	
divorce	A 103 N 7
(x) More apposition from bushend without any demand	
from wife, whether starts limitation running	A 103 N 6
,	A 103 N 1
1 111	A 103 N 1
whether suit for	
dower	A 103 N I
(xiv) Suit on contract of dower on behalf of or in favour of	
minor-Limitation-Where guardian contracting is	1 100 17 10
liable on express contract of suretyship (xy) What is, during continuance of marriage	A 103 N 12 A 103 N 6
(xv) What is, during continuance of marriage (xvi) Where claim for dower is embodied in registered con-	A 103 N 0
tract—Limitation	A 103 N 11
(xvii) Where in consideration of dower debt, mortgage deed	11 100 11 11
is executed by husband in favour of wife-Limitation	A 103 N 10
(xviii) Where marriage is dissolved by death	A 103 N 5
(xix) Where marriage is dissolved by divorce	A 103 N 5
(xx) Where suit is against husband who is executor of	
wife's will	A 103 N 8
(e) Suit for	
(i) By wife against legal representatives of husband where	
husband dies without payment of dower debt-Main.	
pushand dies without pat ment of dower deut-main.	
tainability of suit	A 103 N 4
tuinability of suit (ii) Where wife makes definite and unambiguous demand	A 103 N 4
tainability of suit (ii) Where wife makes definite and unambiguous demand for dower	A 103 N 4 A 103 N 5
tainability of suit (ii) Where wife makes definite and unambiguous demand for dower (i) Wife, whether must make demand for dower before institu-	A 103 N 5
tainability of suit (ii) Where wife makes definite and unambiguous demand for dower (i) Wife, whether must make demand for dower before institu- tion of suit	A 103 N 5 A 103 N 5
tainability of suit (ii) Where wife makes definite and unambiguous demand for dower (if) Wife, whether must make demand for dower before institution of suit Liability of husbrad, nature of —Husband, if trustee for dower	A 103 N 5
tainability of suit (ii) Where wife makes definite and unambiguous demand for dower (i) Wife, whether must make demand for dower before institution of suit. — Liability of husbrad, nature of — Hushand, if trustee for dower — Meaning of, in Mahomedan kw	A 103 N 5 A 103 N 5
tainability of suit (ii) Where wife makes definite and unambiguous demand for dower (i) Wife, whether must make demand for dower before institu- tion of suit —Liability of husband, nature of—Husband, if trustee for dower	A 103 N 5 A 103 N 5 S 10 N 11
tainability of suit (ii) Where wife makes definite and unambiguous demand for dower (i) Wife, whether must make demand for dower before institution of suit. — Liability of husbrad, nature of — Hushand, if trustee for dower — Meaning of, in Mahomedan kw	A 103 N 5 A 103 N 5 S 10 N 11 A 103 N 1

2/00	CENER	AL INDEA			
Dower-(Contd.)	•	•	1		÷
-Suit for recovery					
(a) Limitation—Starti	ng point-S	uit by beirs	of wife		A 116 N 13
(b) Suit based on regis					A 116 N 13
Drink			•••	•••	
Price of Suit for Limit	itation				A 8
	eacion .	***	•••	•••	
Easement					
Acquisition of		•			0.000.037.4
(a) By custom	•••	•••	•••		S 2 Cl 2 N 4
(b) By dedication	•••	•••	•••	•••	S 2 Cl 5 N 4
(c) By prescription					D 00 37 0
(i) Nature of us		t to acquisiti	on	•••	S 26 N 3
(11) Principle un	derlying	•••	•••	•••	S 26 N 3
(d) Conditions	•••	•••	•••	***	S 26
(e) Co-owners-One c	o-owner of i	mmovable pr	operty, if	can as	
euch acquire ease	ment for be	peficial enjoy	ment of suc	h pro-	
norte		•••			S 26 N 5
(f) Farament against	Crown	•••			
.,,				*:	S 26 N 16
		•			
Property in	nossesson	of tenant or o	ther person	n with	
limited rick	t Facemen	at, if can be a	navired in r	ognect	
ol it	- Lasemer	io, ii can be a	equired sa r	copour	S 26 N 16
(g) Easement cannot i	o accominad .	a hop there I	haa baan m	o ngar	
at all		when mere i	ins pect to	•••	. S 26 N 14
(h) Easement claimed		***	Dranautu		
which right is cla			termiene r	tt the	S 26 N 16
date the easemen	is claimed	ana suea	···	٠	5 20
(1) Easement claimed		-	Jovernmen	t00	S 26 N 16
years' user necess			***		D 20 11 -1
(1) Easement to sprea					
bour's land with	out liability	y to cut—\	Whether co	n ne	S 26 N 15
claimed	•••	•••	•••	•••	D 20 H 20
(k) Enjoyment as an e					
(i) Acts done by	person clair	ming easomer	nt only refe	ərable	
to a purpor	ed character	r of owner—	Whether ca	n sus-	
taio subsequ	ent claim fo	or easement i	n respect of	pro.	S 26 N 12
perty	•••	***	•••	•••	S 20 M 12
(11) Mere fact t					
claim of ow	nership which	h is found to	he not pro	red—	
Whether co	oclusive as t	to whether ri	ght 'was en	joyed	S 26 N 12
as easement		•••	***	•••	S 26 N 12
(111) Ownership o	f property v	estiog jointly	in several	per-	
sonsEach	exclusively	enjoying som	e portion v	vhich	
is undivide	d from the	rest—One o	of them, if	can	
acquire rigl	at of easeme	nt over plot	beld exclus	ively	S 26 N 12
by other co	sharers	•••		•••	S 20 M 12
(iv) Unity of pos	session or o	wnership in	the same p	erson	
of both the	tenements-	Enjoyment a	s easement	dur-	S 26 N 12
iog the peri	od of unity.	if possible		•••	S 20 N 12
(I) Enjoyment as of ri	eht .	-			
(1) Constant int	erruptioos e	en if not acq	uiesced in i	lor a	
year-Whe	ther shows t	hat enjoymen	t was not	as of	S 26 N 13
right		3-3			5 20 M 10

... -

•••

right

•••

GENERAL INDEX (ii) Difference between Indian and English law as regards

Easement-Acquisition of-Enjoyment as of right-(Contd)

this requirement

2787

S 26 N 13

this requirement	S 26 N 13
(m) Enjoyment begun as nf right-Mere interruption for	
less than a year.—Whether affects it	S 26 N 13
(iv) Enjoyment in such a manner as not to involve the	
admission of any obstructive right in the owner of	
the servient tenement-Whether enjoyment as of	
right	S 26 N 13
(v) Enjoyment must be an adverse exercise of a growing	
right against servient tenement	S 26 N 13
(vi) Meaning of	S 26 N 13
(vii) Permissive user, if user as of right	S 26 N 13
(viii) Proof of long open user-Presnmption that it has	
been as of right, if arises	S 26 N 13
(ix) Test to determine if onjoyment is as of right	S 26 N 13
(x) User must be in the assertion of right as if claimant	-
was true owner of the right	S 26 N 13
(m) Enjoyment for 20 years	
(i) Actual user within two years next before institution of	
suit-Whether necessary	S 26 N 15
(ii) Alteration of easement during course of enjoyment	2 20 21 20
imposing additional or new hurden on servient tene-	
ment-Fresh period of 20 years' enjoyment is neces-	
sary to acquire right	S 26 N 15
(iii) Computation of period-Property held under or hy	
virtue of any interest for life or any term of years	
exceeding three years from the granting thereof	S 27
(11) Dominant owner in enjoyment for less than 20 years	
-Whether gives him sufficient interest as against	
trespassers to maintain suit against them for relief	5 26 N 13
(v) Hindu widow in enjoyment of servient tenement-	
Exclusion of period in favour of reversioner—When	
available	S 27
(vi) Period must end within two years before institution of	5
sut	S 26 N 15
(vii) Persons successively in possession of dominant tene-	
ment-Periods, if can be tacked to make up statutory	
period	S 26 N 15
(viii) Requirement of 20 years' user not applicable to ease.	
ments that may be acquired by contract or custom	S 26 N 15
(ix) Right to easement, if indefeasibly established by	
enjoyment for less than 20 years	S 26 N 15
(x) Same easement must have been enjoyed for the period.	S 26 N 15
(xi) Same person need not have emoved easement for the	
whole of the 20 years	S 26 N 15
whole of the 20 years (xii) Without interruption—"Interruption"—Meaning of	S 26
(n) Enjoyment without interruption	
//\ \ \	S 26 N 14
	S 26 N 14
***	S 26 X 14
(1v) Discontinuance of enjoyment.—When amounts to in.	~ 11 11
terruption	S 26 N 14
•	

2788	GENERAL INDEX		
Easement_A	cquisition of-Enjoyment without interruption-(Contd.)	
	v) Dominant numer himself creating obstruction of per-		•
`	manent character—Act, if amounts to abandonment of	S 26	N 14
1-	i) Evidence of protest unaccompanied by actual obstruc-	0 20	74 73
(,	tion—Whether sufficient to support plea of interrup-		
	tion	S 26	N 14
· (vi	ii) Exercise of right need not be continuous	S 26	
(vii	ii) Interruption—What amounts to	S 26	N 14
(i:	x) Interruption, if confined to case of intermediate		•
	obstructions in the course of period of enjoyment for		17 44
		S 26	N 1#
(:	x) Interruption at the end of perind of 20 years—Effect	S 26	N 11
1.	nf	J 20	11 11
()	rebuilt with windows corresponding to ald windows		
	Tomporary discontinuous of anisyment if an		
	interruption	3 26	N 14
(xi	i) Mere non-user, if can show that right has been		
	acandoned	3 26 1	U 1x
iiz)	ii) Mere non-user of an easement for a time — Whether	3 26 1	N 11
/1	an interruption of the enjoyment		
(xı	nf right intentional actual mentional	3 26	N 14
(x	a) Man area a man 2 bar ab demaktion of manage without them		
,	claiment himself Whather amounts to interruption:	S 26 I	
(xv	vi) Non-user of right—When amounts to an interruption:	3 26	NIE
	ii) Non-user to amount to interruption must have effect		
, -	nf a prevention of the user by some person acting	3 26 1	N 14
	adversely to claimant	, 20 1	.1
irz)	ii) Proof of circumstances merely negativing assent on the		
	part of servient owner to enjoyment of easement		
	claimed — Whether sufficient to support plea of	26 1	1 I I
() T-	interruption		
	nement		
	the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer of the transfer o	S 27	NI I
	termination of term or interest, to claim deduction	5 31	ta r
(i	ii) Owner not determining tenancy at expiry of term and		
	allowing tenant to hold over-Whether offects ques-	S 27	NΙ
	tion of excinsion	26 1	N 15
	ing of the suit enables easement to he acquired		
Li	imitation Act	S 26	N 4
(r) Gra	ant or other legal prigin of casement, if can be presumed	S 26	N 4
(s) His	story of the law of acquisition of easements in India	S 26	74 I
(t) Int	erruption of eninyment - User prior to interruption -		
"	hether can be added on to period subsequent to interrup.	26 N	; 15
tio	on	15 N	: 11
(u) Lin		5 26	N 3
(v) Lor	ng usor—Whether by itself creates right of casement		

GENERAL INDEX Easement-Acquisition of-(Contd.) (w) Long user by grantee or covenantee openly and peaceably and without fear of interruption-Whether gives rise to presumption of grant or covenant... S 26 N 3 (x) Modes of acquisition other than by prescription not barred ... S 26 N 4 (v) No absolute right can be acquired until right is brought in question in some suit... S 26 N 15 (z) Open enjoyment (i) Actual knowledge on the part of servient owner of right emoved by dominant owner-Whether neces. S 26 N 11 (11) Enjoyment must be of a nature from which a presumption, that the nwner had knowledge and bad acquiesced in the right, might be drawn S 26 N 11 (iii) Enjoyment which cannot be prevented - Whether raises presumption of consent or acquiescence S 26 N 11 (iv) "Openly" in S. 26-Meaning of S 26 N 11 ... (v) Principle of requirement that emoyment should be open S 26 N 11 (vi) Reason of the requirement that user must be open ... S 26 N 11 (z1) Peaceable enjoyment—Mere protest, if readers the enjoyment otherwise than peaceable ... S 26 N 10 (z2) "Peaceably" in S 26-Meaning of S 26 N 10 (z3) Period of 20 years—How to be computed S 26 (z4) Prescription S 26 N 3 ... (z5) Property over which right is claimed belonging to the Crown -Enjoyment should be for 60 years S 26 (z6) Provisions for - Whether applicable to easements against A 149 N 3 Government (z⁷) Right in respect of sweeper's passage, if can be acquired ... S 2 Cl 5 N 9 (z5) Right of fishery as profit a prendre, if can be acquired ... S 2 Cl 5 N 9 (zº) Right of pasturage, if can be acquired .. S 2 Cl 5 N 9 (z10) Right of privacy, if can be acquired as easement ... S 2 Cl 5 N O (z11) Right of support, if can be acquired ... S 2 Cl 5 N 9 ... (z12) Right of way (1) Emoyment without interruption - Right of way be. tween fixed termini-Servient owner pointing out different pathway-Whether amonuts to interruption S 26 N 14 of easement (u) Peaceable and open enjoyment as easement, as of right, without interruption and for 20 years-Right is acquired S 26 (iii) Suit for obstructing right of way-Defendants admit-

ting obstruction but denying right of way-Proof by plaintiff that right was peaceably and openly enjoyed as an easement, as of right and without interruntion

-Right of plaintiff to judgment

by prescription

(iv) Whether can be acquired partly by grant and partly S 26 N 4 asement .. S 2 Cl 5 N 9 e acquired S 2 Cl 5 N 9 3 acquired S 2 Cl 5 N 9

S 26

Ease

(-17) Wight to Justiness among a straight from he	
(z17) Right to discharge smoke over another's land, if can be	
acquired	S 2 CI 5 N 9
(z18) Right to dry tobacco un adjacent land, if can be acquired	S 2 Cl 5 N 9
(z19) Right to exercise a nuximus or injurious pr offensive occupa-	
tion, if can be acquired	S 2 Cl 5 N 9
(z20) Right to fish without stint and for commercial purposes	
which might lead to destruction of subject matter-Whe-	0 0 0 5 N 6
ther can be acquired as easement	S 2 CI 5 N 6
(z21) Right to go un another's land to gather fruits falling there,	S 2 CI 5 N 9
if can he acquired	5 2 010 110
(z ²²) Right to hold musical festival un particular land, if can be acquired	S 2 CI 5 N 9
(z ²³) Right to keep a bund at a particular height, if can be	D 2 01 0 1 1
acquired	S 2 CI 5 N 9
(z ²⁴) Right tolight and air, if can be acquired	~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~
(z25) Right to promiscums use of the whole property by driving	
eattle over it in all directions Whether can be acquired as	
aggamant	S 2 Cl 5 N 6
(will) Dight to your fish in another's tonk if can be acquired	S 2 Cl 5 N 9
(z27) Right to stack manure on a certain plot, if can be acquired:	S 2 Cl 5 N 9
(23) Right to throw back surface water and been it standing on	
another's land, it can be acquired	8 2 Cl 5 X 9
to one's own land, if can be acquired	S 2 Cl 5 N 9
(z ⁹⁰) Right to use land for storing, if can be acquired	S 2 Cl 5 N 9
(z ³¹) Right to use of water, if can be acquired	S 2 Cl 5 N 9 S 2 Cl 5 N 9
	SZCIENO
(z33) Right to user of way, if can be acquired	S 2 Cl 5 N 9
(z34) Right to watercourse-Peaccable and upon enjoyment as	
easement, as of right, without interruption for 20 years-	S 26
Right is acquired	5 20
(235) Right to watercourse or to use of any water—Whether can	S 26 N 8
be acquired by prescription	
(z36) Right which will destroy ordinary user of property by owner	S 2 Cl 5 N 6
—Whether can be acquired as easement (z ³⁷) Right which would prevent servient owner from making	
as easement	S 2 Cl 5 N 6
(z ³⁵) Same easement	
(1) Easement for allowing sweepers to walk and clean	
privy a certain number of times a year—Rule requir-	S 26 N 15
ing cleansing of privy daily—Easement if altered	S 20 11 10
(11) Growing tree cannot be enjoyed as same easement for	S 26 N 15
any length of time	550-
(ni) Light received through new apertures, same or substan-	
tial part of light received through old windows-	S 26 N 15
Easement, if altered	

(iv) Question whether same casement has been enjoyed

during a particular period is one of fact (v) Same channel used to take water from tank—Water taken through different prenings-Easement, if dif-

ferent

S 26 N 15

S 26 N 15

	2101
Easement-Acquisition of -Same casement-(Contd.)	
(vi) Terminu of way fixed—Servient owner pointing ou trute from time to time—Easement, if altered (z39) Suit for obstructing right of way—Plaintiff showing the right was peaceably and openly empoyed by him for 20 year—Defendant proving that plaintiff on one occasion durin the 20 years asked his leave to empty the right—Suit should	. S 26 N 15 t s s
be dismissed	. S 26
(z ⁴⁰) Whether can be acquired by finctnating body, by enstom	
(z41) Whether can be acquired oither by owner of tenement or o his behalf by person in possession thereof	C 00 NT P
(z ⁴²) Who can acquire	
(1) Permanent tenure-holder, if can acquire easemen	
against the owner or another permanent tenure holder	: S 26 N 13
(11) Tenant, if can acquire easement for his own benefit a against landlord	s S 26 N 13
(iii) Tenant of owner—Whether can acquire easement for	
	0.00.37 #
	0.00.07.14
—Alteration of	
(a) Building of new windows not receiving the same cones of	,ŧ
light as were received by old windows-Easement can onl	9
be acquired by 20 years' enjoyment of light through ne-	w
windows	. S 26 N 15
(b) Easement of support—Increase in burden—Suit as to—Limi	
tation	. A 32 N 2
(c) Owner of dominant tenement, if can by alteration increase	
his right	. S 26 N 15
"Any other easement" to S 26-Meaning of	826 N 9
Classes of	S 2 Cl 5 N 11
(a) Affirmative and negative casements, what are (b) Apparent and non-apparent easements, what are	.S2CI5N11
(c) Continuous and discontinuous easements, what are	S 2 CI 5 N 11
	S 2 Cl 5 N 11
- Customary easement - Acquisition - 20 years' user not necessary	
- Definition is wider than in Easements Act	. S 2 Cl 5 N 1
- Disturbance of Suit in respect of, whon maintainable	.S 2 Cl 5 N 9a
- Encroachment of Suit as to Limitation applicable	
77	S 26 N 12
(a) Dominant and servient tenements-Necessity of	. S 2 Cl 5 N 4
(b) Easement must be for the beneficial enjoyment of th	9
	. S 2 Cl 5 N 5
—Extent of	0 - 01 - 15 -
(a) Accustomed user, if determines extent	.S 2 Cl 5 N 9a .S 2 Cl 5 N 9a
(b) Air, casement to	S 2 Cl 5 N 94
	.S 2 Cl 5 N 94
(e) Right of way for one purpose, if can extend to any purpose	
whatever	.S 2 Cl 5 N 94
(f) Right of way, if includes right to carry marriage and funera	1
	.S 2 Cl 5 N 9a
(g) Right to take river-water, if includes right to storage .	.8 2 Ct 5 N 9a

2792 GENERAL	INDEX		
Easement-Extent of-(Contd.)			
(h) Support, easement of Extent of applicability of Easements A	ct and the L		S 2 Cl 5 N 9a S 26 N 3
-Extinguishment of Unity of title of	the domina	int and service	nt
estates in same person—Whether a	nd when ox	tinguishes eas	e- S 26 N 23
If includes all easements recognized by	English lav	٧	S2C15N1
If includes profits a prendre	· <u>··</u> ·		S 2 Cl 5 N 1
Law applicable to, in Provinces whe	re Easemen		ot S 26 N 2
Law governing—Applicability of Engli	ish law	•••	S 26 N 2
License, distinction from Light and air	•••		S 2 C1 5 N 3
(a) Enjoyment as of right without	interruptio	n for 20 yea	rs S 26
Right is acquired (b) Fact that light from other source	es exists that	n that which	**
acquired by prescription-Wi	ether answ	er to suit fo	or
infringement of prescriptive rig	nt to light ar	d air which n	S 25 N 20
(c) Nature of easement right to light	and air	•••	S 26 N 6
•	cription		B 26 N 6
		rture in wall-	
Aperture, if should belong to do	minant own	er .	. 896 N 6
Meaning of	•;		" S 2 Cl 5 N 2
1			. S 2 Cl 5 N 5
(e) Exclusive right to maintain ferr	w on anoth	to concentration	14
andament	., 01 410111		
(f) Ferry, right of, if easement			S 2 Cl 5 N 4 S 2 Cl 5 N 2
			S 2 Cl 5 N 2
•		bree s'eem	if.
an easement	•••	•••	S2C15N6 S2C15N4
(1) Profit a prendre, if easement (k) Projection of one's building over	the land of	another merel	
for ornamentation—Whether es			. S2C15N5 S2C15N4
 (l) Right in gross, if easement (m) Right must he for beneficial en 	inument of		
ment	MAINEUR OF	dominant res	
(n) Right of prospect, if easement			S 2 Cl 5 N 9
(o) Right of way independent of it ficial enjoyment of any don	s being nece		
easement	•••		" godis N2
(p) Right to huild, if easement	#*		
•			S2CI5N9
(t) December 1245 Dille to 1.1	11 41	- flowing in	
(t) Riparian rights—Right to take natural stream to the exclusion	n of lower i		
-Whether easement	•••		S 2 C1 5 N 6

Easement—Meaning of—(Contd.)	
	S 2 Cl 5 N 7
(v) Whether includes all easements recognized by English law.	8 2 Cl 5 N 1
(w) Whether includes profit a prendre whether in gross or	C 0 C1 F N 1
	S 2 Cl 5 N 1 S 2 Cl 5 N 2
	5 2 CI 3 N 2
-Nature of	
(a) Easement attaches to one land or building over another land	S 26 N 16
and not against persons (b) Easement, if an interest in immovable property	S 2 Cl 5 N 10
(c) Easement is a specific right	S 2 Cl 5 N 7
(d) Easement is only a fractional right of user	S 2 Cl 5 N 6
(e) Owner, if excluded from using his property	S 2 Cl 5 N 6
(f) Vesting of right, if only in determinate individuals	8 2 Cl 5 N 7
-Nature of right	
(a) Fact that dominant owner is not inconvenienced by obstruc-	
tion—Whether affects right acquired in suit	S 26 N 20
(h) Right to easement established—Dominant owner making	
excessive user of it to which user he has not acquired a	
prescriptive right—Servient owner can obstruct and pre-	0.00 11.00
vent excessive user but not rightful user	S 26 N 20
(c) Right to easement established in suit—Right becomes absolute and indefeasible	S 26 N 20
(3) Whether might to mee non-min (an analysis and	A 32 N 2
Ownership of, acquisition by possession	Preamble
—Plea of	2.00-2
(a) Alternative claim to ownership of servient tenement and to	
easement thereon-Whether can be set up by a party	S 26 N 17
(b) Claim to easement by prescription-Whether can be con-	
verted by Court into one by custom	S 26 N 17
(c) Claimant can only claim that his right should not be	
encroached upon	8 26 N 17 S 26 N 17
 (d) If can be taken for the first time in second appeal (e) Plea that party has been using water from a particular 	5 20 N 11
source from time immemorial—Whether amounts to setting	
up plea of an easement	S 26 N 17
(f) Suit by owner of servient tenement for redress within 20	
years-Claimant to easement, if can rely on plea of pres-	
(g) Suit merely to establish right of ownership to property—	S 26 N 15
(g) Suit merely to establish right of ownership to property—	
Court, if can enter into and decide right to an easement	S 26 N 17
(h) Whether can be taken at any stage of the suit	S 26 N 17
-Prescriptive right allowed by Act-Custom to the effect that no	0 20 14 11
such right shall be acquired is not admissible	S 26 N 21
-Presumption-Long open user of right proved-Presumption that	
user was as of right—Whether arises	S 26 N 18
Proof of	
(a) Obstruction proved to have taken place-Onus is on person	
obstructed to show that he did not submit to or acquiesce	
in it	S 26 N 18
(b) Onus is on claimant to establish all points necessary to	C 0C 37 70
establish easement	S 26 N 18

Easement—(Contd.)	
Provisions as to, in Act—Whether apply to cases arising in terri	
tories to which Easements Act may for the time being extend	: S 29
-Revival of-Easement extinguished by union of dominant and	l
servient tenements in nne owner-When can he revived	S 26 N 22
Right of way	
(a) Acquisition of—Actual user without interruption, if neces-	
· · ·	C OC N 11
0.00	COO N. F.
(h) Classes of rights of way	
(c) Person establishing right of way over another's land to go to	, ~
a plot-Fact that he has another way by which he can go	
to the same plot—Whether affects his right to enjoy ease	S 26 N 20
ment established	
(d) Right for passage of boats-Whether anelogous to right of	S 26 N 7
way	
(e) Whether can he acquired partly by grant and partly by	
prescription	S 26 N 4
Right to watercourse	
(a) Artificial watercourso—Right to flow or use of water must	- 00 2 0
rest on some grant or arrangement proved or presumed	S 26 N 8
(h) Artificial watercourse found to have been for temporary	
purpose and liable to variation-Grant of casement cannot	
he presumed from long enjoyment	
(c) Artificial watercourse intended to he a permanent one-	
Right to use of water can be acquired by prescription	5 26 N 0
(d) Whether can be acquired by prescription	S 26 N 8
Rights recognized as, what are	S 2 CI 5 N 9
-Rights that can be acquired as easements - Right to cause river-	
water to flow across dominant tenement for irrigation by means	
of emhankment erected on dominant tenement	
	8 30 10
	S 26 N 1
Servitudes-Origin of	S 26 N 1
——Servitudes—Origin of	S 26 N 1 S 2 Cl 5 N 1
——Servitudes—Origin of	S 26 N 1
——Servitudes noder Roman Law	S 26 N 1 S 2 Cl 5 N 1
Servitudes-Origin of	S 26 N 1 S 2 Cl 5 N 1
Servitudes—Origin of	S 26 N 1 S 2 Cl 5 N 1 S 2 C
Servitudes—Origin of	8 26 N 1 8 2 Cl 5 N 1 8 26
Servitudes under Roman Law Suit for—Period of 20 years should end within two years next hefore institution of snit Suit nespect of (a) Benamidar for dominant owner—Whether can sue for removal of obstruction to access to light and air to dominant mant tenement Suit In Service Suit Suit Suit Suit Suit Suit Suit Suit	S 26 N 1 S 2 Cl 5 N 1 S 2 C
— Servitudes—Origin of	S 26 N 19 S 26 N 19
— Servitudes - Origin of	8 26 N 1 8 2 Cl 5 N 1 8 26
— Servitudes — Origin of	S 26 N 19 S 26 N 19
— Servitudes - Origin of	S 26 N 1 S 2 Cl 5 N 1 S 26 N 19 S 26 N 19 S 26 N 19
— Servitudes—Origin of	S 26 N 19 S 26 N 19
— Servitudes - Origin of	S 26 N 1 S 2 Cl 5 N 1 S 26 N 19 S 26 N 19 S 26 N 19
— Servitudes—Origin of	\$ 26 N 1 \$ 26 N 1 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19
Servitudes—Origin of Servitudes under Roman Law Suit for—Period of 20 years should end within two years next hefore institution of snit Suit in respect of (a) Benamidar for dominant owner — Whether can sue for removal of obstruction to access to light and air to dominant tenement (b) Parties to suit (c) Suit for declaration of right to an easement—All owners of servient tenement should be made defendants (d) Suit to remove obstruction created by one of the owners of the servient tenement—Other owners are not necessary parties (e) Water carried by drain on another's landgoing to third party's land—Claimant, if can sue third party to allow the water	S 26 N 1 S 2 Cl 5 N 1 S 26 N 19 S 26 N 19 S 26 N 19
Servitudes—Origin of	\$ 26 N 1 \$ 26 N 1 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19
Servitudes—Origin of	\$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19
Servitudes—Origin of Servitudes under Roman Lav Suit for—Period of 20 years should end within two years next hefore institution of sint Suit in respect of (a) Benamidar for dominant owner — Whether can sue for removal of obstruction to access to light and air to dominant tenement (b) Parties to suit (c) Suit for declaration of right to an easement—All owners of servient tenement should be made defendants (d) Suit to remove obstruction created by one of the owners of the servient tenement—Other owners are not necessary parties (e) Water carried by drain on another's land going to third party's land—Claimant, if can sue third party to allow the water to flow to third party's land Suspension of—One estate held in fee and the other for a term of years—Unity of possession only suspends essement during the time of such units to	\$ 26 N 1 \$ 26 N 1 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19
Servitudes—Origin of Servitudes under Roman Lav Suit for—Period of 20 years should end within two years next hefore institution of sint Suit in respect of (a) Benamidar for dominant owner — Whether can sue for removal of obstruction to access to light and air to dominant tenement (b) Parties to suit (c) Suit for declaration of right to an easement—All owners of servient tenement should be made defendants (d) Suit to remove obstruction created by one of the owners of the servient tenement—Other owners are not necessary parties (e) Water carried by drain on another's land going to third party's land—Claimant, if can sue third party to allow the water to flow to third party's land Suspension of—One estate held in fee and the other for a term of years—Unity of possession only suspends essement during the time of such units to	\$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19
Servitudes—Origin of Servitudes under Roman Law Suit for—Period of 20 years should end within two years next hefore institution of snit Suit nespect of (a) Benamidar for dominant owner — Whether can sue for removal of obstruction to access to light and air to dominant tenement (b) Parties to suit (c) Suit for declaration of right to an easement—All owners of servient tenement should be made defendants (d) Suit to remove obstruction created by one of the owners of the servient tenement—Other owners are not necessary parties (e) Water carried by drain on another's land going to third party's land—Claimant, if can sue third party to allow the water to flow to third party's land Suspension of—One estate held in fee and the other for a term of years—Unity of possession only suspends easement during the	\$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19
Servitudes—Origin of Servitudes under Roman Law Suit for—Period of 20 years should end within two years next hefore institution of suit Suit in respect of (a) Benamidar for dominant owner — Whether can sue for removal of obstruction to access to light and air to dominant tenement (b) Parties to suit (c) Suit for declaration of right to an easement—All owners of servient tenement should be made defendants (d) Suit to remove obstruction created by one of the owners of the servient tenement—Other owners are not necessary parties (e) Water carried by drain on another's landgoing to third party's land—Claimant, if can sue third party to allow the water to flow to third party's land Suspension of—One estate held in fee and the other for a term of years—Unity of possession only suspends easement during the time of such unity Unity of title or possession of dominant and servient estates in same preson—Effect	\$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19
Servitudes—Origin of Servitudes under Roman Law Suit for—Period of 20 years should end within two years next hefore institution of suit Suit in respect of (a) Benamidar for dominant owner — Whether can sue for removal of obstruction to access to light and air to dominant tenement (b) Parties to suit (c) Suit for declaration of right to an easement—All owners of servient tenement should be made defendants (d) Suit to remove obstruction created by one of the owners of the servient tenement—Other owners are not necessary parties (e) Water carried by drain on another's landgoing to third party's land—Claimant, if can sue third party to allow the water to flow to third party's land Suspension of—One estate held in fee and the other for a term of years—Unity of possession only suspends easement during the time of such unity Unity of title or possession of dominant and servient estates in same preson—Effect	\$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19 \$ 26 N 19

General Index	2795
Easements Act—(Contd)	
Provinces in which Easements Act does not apply Law regulating easement	S 2 Cl 5 N 2
do not apply	13 23
Suit for ejecting mortgagor to whom mortgagee has leased back mortgaged property—Limitation Suit for ejectment by private person against another in respect of specified field which has been recorded as part of thoroughfare and	A 135 N 2
shamilat-e-deh-Limitation	A 146-A N 3
Suit for ejectment of tenant (a) Defendant setting up permanent tenancy—Burden of proof	A 139 N 17
(b) On ground of misuse of land - Suit under Bengal Tenancy	A 143 N 2
(c) Suit framed in tort—Limitation —Suit for ejectment of transfelice and restoration of property to	A 143 N 2
trustee, whether suit for possession within Art 134	A 134 N 3
Suit for ejectment on ground that defendant is tenant at will—Suit, whether one for correction of entry in Record of Rights	A 120 N 50
Suit for ejectment or possession and suit for rent — Whether on same cause of action for purposes of S 14 Suit in Revenue Court for ejectment of defendants as tenants—Suit in Civil Court for ejecting them as trespasses—Whether	S 14 N 18
on same cause of action for purposes of S 14	S 14 N 18
	A 189 N 19 A 120 N 10 A 120 N 10
Endowment	
	S 22 N 6
(i) If trustee in the eye of law (ii) Is only custedian of institution A 14 (c) Math—Title by adverse possession, if can be obtained against	
(c1) Office of manager—Alternation of, by manager is void ab	S 23 N 4
vested in trust for a specific trust	S 10 N 25

2796	GENERAL INDEX
Endo	wment—Religious endowment—(Contd.)
	(e) Property comprised in religious or charitable endowment, whether property vested in trust for epecific purpose S 10
	(f) Property purchased in name of Hindu idol from funds belong- ing to purchaser—Purchaser, if under obligation to bold
	property for benefit of idol S 10 N 10
	(g) Shebaits—Devolution of right to eue S 2 Cl 8 N 6
	(g') Suit against alience of property without consideration from manager, for possession—No limitation A 142 & 144 N 49
	(h) Suit by manager—Limitation A 149 N 5
	(i) Suit by manager of endowment to recover possession of im-
	movable property transferred by previous manager for valuable consideration—Limitation—Starting point
	A 134.ABC N 5 & N 2
	(1) Suit by manager of endowment to recover possession of
	moveable property sold by previous manager for valuable consideration A 134.ABC N 2
	(k) Suit by worshippers against archakas of temple for declara-
	tion that lease by them of hundral collections was invalid
	—Subsequent cuit by trustee against same defendants for recovery of collections taken by them—Period of pendency
	of former suit cannot be excluded in computing limitation
	for latter suit
	(1) Suit to set aside transfer of immovable property by manager of endowment for valuable consideration—Limitation A 134.ABC N 2
	(11) Transfer of property by manager—Succeeding manager will
	(1) Transfer of property by manager—Succeeding manager will not get frosh starting point A 142 & 144 N 49
	(12) Transfer of property by manager as owner (1) Time runs against institution from date of transfer
	A 142 & 144 N 49
	(ii) Transfer void ab initio A 142 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 122 k 1
	feror A 142 & 121 A
	(1) Transfer of property by manager, without legal necessity— Transfer not void ab initio A 142 & 144 N 49
	(15) Transferce from manager—Snit against, for possession—
	Limitation—Starting point A 142 & 122
	(m) Trustee of Hindu religious institution—Suit for recovery of trust property from stranger — Limitation commencing to
	run during lifetime of one trustee—Another trustee succeed. c 10 N 27
	ing to dince—I resu start of limitation, it available
	(p) Vahivatdars of Parsi Anjaman — Whether trustees for a specific purpose S 10 N 26
	Religious institution (a) Cannot be recarded as perpetual minor A 142 & 144 N 49
	(b) Of Hindus, Mnhammadans or Buddhists—Recognition of, as juridical person capable of holding property A 142 & 144 N 49
	-Religious or charitable endowment

Endowment—Religions or charitable endowment—(Contd.)
(c) Alience of property — Whether acquires prescriptive title,
after period of limitation for suit to recover possession
from alience A 134-ABC N 10
(d) Hindu, Muhammadan or Buddhist religious or charitable endowment—Property of—Whether alienable A 134.ABC N 2
endowment—Property of —Whether alienable A 134-ABC N 2 (e) Manager of —Who is, within Arts. 134-B and C A 134-ABC N 6
(i) Property comprised in—Whether property vested in trust
for specific purpose S 10
(g) Property comprised in Hindu, Mnhammadan or Buddbist
charitable or religious endowment, whether property con-
veyed or hequeathed in trust within Art. 134
Suit for—Limitation A 48-B
(1) Suit by manager
(i) For recovery of possession of immovable property
transferred by previous manager - Alience, whether
acquires title by prescription if suit by manager is
not brought within prescribed period A 134.ABC N 10
transferred by previous manager—Limitation—Start.
ing point A 134-ABC N 9
(iii) Suit by committee of macagement appointed by Court
-Suit, whether by manager within Arts. 134-B and C
(iv) Suit by person in possession of property for recovery
thereof for benefit of institution —Suit, whether one
by manager within Arts. 134.B and C A 134.ABC N 6
(v) To recover possession of immovable property trans-
ferred by previous manager—Limitation — Starting
point—Where transfer is ab unitio void A 134-ABC N 7 (vi) To recover possession of immovable property transfer.
red by previous manager, against auction-purchaser—
Where property is sold to execution of decree against
manager—Limitatioo—Starting point A 134.ABC N 8
(1) Suit by person interested in endowment for declaration that
alienation by manager of endowment is invalid and for ejectment of transferee and restoration of property to manager
—Limitation A 134-ABC N 4
(k) Suit in respect of property - Limitation - Arts 134-A,
134-B, 134-C,—Retrospective effect of A 134-ABC N 3
(1) Transfer of property by manager for valuable consideration
—Suit for recovery by succeeding manager—Limitation— Starting point A 134 N 5
Starting point A 134 N 5
English law
——If binding on Indian Courts Preamble N 16
-Principles of, applicability to Indian codified law Preamble N 16
English Prescription Act
User for a particular period-Whether creates by its own force a right which was non-existent S 26 X 3
right which was non-existent S 26 X 3

2798		GENE	RAL INDEX	•		
Equity of rede Estate	mption—See u	nder Red	emption—E	Equity of.		
Eotire esta	te -Meaning o					A 121 N
Evidence						
Admissibili	ity—Declaratio	n of inte	ntion by ar	thor of ins	trument	
	er admissible fo					S 19 N 3
Dates endo	rsed on certifie	d copies-	-Eyidentiar	y value of	***	S 12 N 3
Perjured ev	vidence-Decre	obtaine	d by, whether	er can be set	aside	A 95 N
Secondary						
of	•••			***	•••	S 19 N 3
Evidence Act						
	Acknowle	Idmont .	f liability	contained i	n letter	
	without premdic			LODINATOCA I	II TOTOL	S 19 N 66
- Section 90	—Presumption	under_/	Annlicability	to docume	nts coo.	
	knowledgment					S 19 N 6
-Section 91				saviog limi	tation-	
Whether	"matter require	d by law	to be reduc	ed to the fo	rm of a	
document	" within S. 91		***	•••	***	S 19 N 40
Section 92	2—Prohibition	under-	Whether ap	plies to un	ilateral	~ 40 NT /1
document	ts like acknowle	dgments	of liability	•••		S 19 N 41
Section 12	4-Application	made in,	official conf	idence—Pro	duction	
	be compelled	by Cour	t to prove a	icknowledgn		S 19 N 70
applicaot		• •	•••	•••	***	5 10 11 15
Exclusion of t	lme			•		
	n for execution-	−Exclusio	on under ot	ber Acts—l	llustra.	S 15 N 5
tioos		. ••				2 10 14 0
	which period	of limita	ition is to	be reckooed	i to be	S 19
excluded		•••	•••	•••	•••	~
Exclusion	of day of prono	incing jud	gment		TO 1	
(a) Date	of judgment of	inly com	municated t	o pleader—	Pleader	
	party not pi	esent on	date—Lim	itatioo for	uplear,	S 12 N 6
AN Turk	en commences se signing judgr			maing it _	Party	-
gone (a)	ning to know of	foot of or	not pronot	mont on sub	entent	
dat	e—Latter date	ie date of	menopouncing	indoment	,cq	S 12 N 6
(c) Suct	day happening	to be a h	oliday—Day	must be ex	cluded:	S 12 N 6
	of time for copi					
(a) Appe	eal from judgme	nt on revi	ewCopy o	f original jud	igment	
sub	nect matter of :	review a	onlication —	Lime requis	ite for	
obt	ainingWheth	or can be	deducted in	computing	period	S 12 N 27
of I	limitation for ap	peal			::	
(b) App	cal from orders	Time sp	ent in obtai	ning not on	ly tair	S 12 N 35
ord	ler but also the	inal orde	r to be exclu	ded	opeing	
(c) App	lication accomp	amed by	insumerent	deposit—c	mation	
ue1	Fime during wh	ing for a	ppricant and	e prepared	due to	27 14
def	iciency—Wheth	er can be	reckoned as	ainst annics	int	S 12 N 14
(d) App	lication bearing	Decessary	const-fee st	amp and add	iressed	
to ·	proper officer—	Time nec	essary for a	scertaining	cost or	S 12 N 14
pre	paring copy—W	hether ti	me requisite	for obtaining	g copy:	
(e) App	lication for conic	s—Sanni	r of folios be	fore they are	called	
ior	by Court—Eff		a computing	time requis	169 101	S 12 N 16
ODLE	aining copy	•••	•••	•••	•••	

GENERAL INDEX	2799>
sion of time—Exclusion of time for copies—(Contd.)	
(f) Application for copies by post—Date from which exclusion	
can be claimed (g) Application for copies, if should have been made by party	S 12 N 9.
himself in person for benefit of exclusion	S 12 N 9
(h) Application for copies made on day on which judgment is pronounced.—That day, if can be excluded twice over	S 12 N 21
 Application for copies of judgment and decree—Decree not signed and hence application so far as decree is concerned returned—Subsequent application—First application, if to be treated as pending—Time from its date, if can be 	
excluded (1) Application for copies struck off and subsequently revived— Computation of period to be made as if the application had	S 12 N 25
spartment render-	S 12 N 17
(1) Application for feave to appeal to Frivy Council—Time requisits for obtaining copies of judgment and decree—	S 12 N 22
Whether can be excluded in computing period of limitation (m) Copies obtained by another party or by stranger—Exclusion	S 12 N 28
of time spent in obtaining-Whether can be claimed	S 12 N 9

S 12 N 7

S 12 N 13

S 12 N 20

S 12 N 9

S 12 N 7

S 12 N 24

S 12 N 32

S 12 N 32

S 12 N 32

S 12 N 10a.

...

Exclusion of time-Exclusion

appeal

(n) Comes of sudgment and decree-Time taken to obtain-Whether must be deducted though such copies need not. according to rules of the High Court, accompany memo of

(o) Copies of judgment and decree applied for on same day— Applicant, if can add on to the fonger period any time

(p) Copies of judgment and decree obtained but not available for being filed - Another application for comes made and appeal filed with copies so obtained. Time requisite to

(a) Copy, if should have been obtained for the purpose of the

(r) Copy of judgment giving all necessary information-Right to exclude time taken in obtaining conv of decree also

(s) Court closing for vacation several days after delivery of judgment-Limitation for appeal expiring during holidays-Conv application filed on re-opening day-Appeal filed on

(t) Criminal Appeal-Time taken to obtain copies of diary orders filed with appeal-Whether can be excluded in com-

(u) Criminal appeal by person in pair - Time taken up in forwarding applications for copies by officer in charge of jail on behalf of appellant and in transmission of such

(v) Criminal appeal or application for leave to appeal-Time taken for necessary copies to be excluded

(w) Day of application for copy and day on which copy is notified

...

within the termini of the longer period

obtain which copy to be excluded

appeal or application in question . .

receiving copies -- Appeal, if barred

copies to jail-Whether to be excluded

puting limitation for appeal

as ready, to be excluded

A 191 N 4

S 19 N 33

S 12 N 34

A 95 N 6

S 19 N 39

S 19 N 66

S 19 N 68

S 19 N 40

S 19 N 41

S 19 N 70

S 15 N 5

S 13 N 6

S 13 N 6

S 19 N 6

S 12 N 27

S 12 N 35

S 12 N 14

S 12 N 14

S 13

...

Equity of redemption—See under Redemption—Equity of. Estate ——Entire estate—Meaning of ... Evidence —Admissibility—Declaration of intention by author of a

Evidence

—Admissibility—Declaration of intention by author of instrument

—Whether admissible for construing the instrument

—Dates endorsed on certified conics—Evidentiary value of

Dates endorsed on certified copies—Evidentiary value of
 Perjured evidence—Decree obtained by, whether can be set aside...

Secondary evidence of contents of acknowledgment—Admissibility

of . . Evidence Act

— Section 90—Presumption under—Applicability to documents con-

on for saving limitation—
o be reduced to the form of a

of, if can be compelled by Court to prove acknowledgment by applicant

Exclusion of time

Application for execution—Exclusion under other Acts—Illustra-

_____Day from which period of limitation is to be reckoned to be evaluated

—Exclusion of day of prononning judgment (a) Date of indgment duly communicated to pleader—Pleader and party not present on date—Limitation for appeal,

when commences

(b) Judge signing judgment but not pronouncing it — Party
compare to know of fact of signing of judgment on subsequent

coming to know of fact of signing of judgment on subsequent date—Latter date is date of pronouncing judgment
...
(c) Such day happening to be a holiday—Day must be excluded:

(a) Appeal from indement on review—Copy of original judgment subject-matter of review application—Time requisite for obtaining—Whether can be deducted in computing period

Exclusion of time for copies

of limitation for appeal

(b) Appeal from orders—Time epent in obtaining not only fair
order but also the final order to be excluded ...

(c) Application accompanied by insufficient deposit—Copying department not calling for applicant and giving information—Time during which copy could not be prepared due to deficiency—Whether can be reckoned against applicant.

(d) Application bearing necessary court-fee stamp and addressed to proper officer—Time necessary for ascertaining cost of

obtaining copy ... S 19 N 16

E

Children and Aller	4190
Exclusion of time—Exclusion of time for copies—(Contd.)	
(f) Application for copies by post—Date from which exclusion can be claimed	S 12 N 9
(g) Application for copies, il should have been made by party himself in person for benefit of oxclusion	S 12 N 9
(h) Application for copies made on day on which judgment is pronounced—That day, if can be evaluded twice over	S 12 N 21
(i) Application for copies of judgment and decree—Decree not signed and bence application so lar as decree is concerned returned—Subsequent application—First application, if to he treated as pending—Time from its date, if can he	
excluded (1) Application for copies struck aff and subsequently revived— Computation of period to be made as if the application had	S 12 N 25
been subsisting (k) Application for copy mislaid by copying department render- ing another application necessary—Delay not to be counted	S 12 N 17
against applicant (1) Application for leave to appeal to Privy Council—Time requisite for obtaining copies of judgment and decree—	S 12 N 22
Whether can be excluded in computing period of limitation (m) Copies obtained by another party or by stranger—Exclusion	S 12 N 28
of time spent in obtaining—Whether can be claimed (n) Copies of judgment and decree—Time taken to obtain—	S 12 N 9
Whether must be deducted though such copies need not, according to rules of the High Court, accompany memo of	
appeal (o) Copies of judgment and decree applied lor on same day— Applicant, if can add on to the longer period any time within the termini of the longer period	S 12 N 7
(p) Copies of judgment and decree obtained but not available for being filed — Another application for copies made and appeal filed with copies so obtained—Time requisite to	3 -2 1, 10
obtain which copy to be excluded (q) Copy, if should have been obtained for the purpose of the	S 12 N 20
appeal or application in question (r) Copy of judgment giving all necessary information—Right to	S 12 N 9
exclude time taken in obtaining copy of decree also	S 12 N 7
(s) Court closing for vacation several days after delivery of judg- ment—Limitation for appeal expiring during holidays— Copy application filed on re-opening day—Appeal filed on	
teceiving copies	S 12 N 24
nuting limitation for appeal (u) Criminal appeal by person in pail — Time taken up in lorwarding applications for copies by officer in charge of pail on behalf of appellant and in transmission of such	S 12 N 32
copies to jail—Whether to be excluded (v) Criminal appeal or application for leave to appeal—Time	S 12 N 32
taken for necessary copies to be excluded (w) Day of application for copy and day nn which copy is notified	S 12 N 32
as ready, to be excluded	S 12 N 10a.

2800	GENERAL INDEX	
(x)	of time—Exclusion of time for copies—(Contd.) Day on which folios are called for and day on which they are supplied to be excluded	S 12 N 14
	Day or days immediately after date of notice for requisite folios happening to be holidays — Such days should be excluded. Days immediately after date of notice for requisite folios happening to be holidays—Papers to be denosited on re-	S 12 N 14
(z¹)	populing day Days immediately after date of notice for requisite folios holidays—Arrangements made for receiving folios during holidays and thus fact duly notified — Applicant cannot	S 12 N 14
(z²)		S 12 N 14
(z³)		S 12 N 12
	copying department—Delay in obtaining copies, if can be excluded	8 12 N 12
	or judgment—Delay during same period in supplying folios in respect of the other document—Whether can be counted against appellant	S 12 N 14
	Delay caused by defective application for copies—Period of exclusion—When commences Delay caused by despatch of copies by post	S 12 N 13
,	(i) Copies asked to be sent by post—Department not doing so but only posting notice on notice beard that copies are ready—Party taking delivery after weiting for a reasonable time—Period hetween date of copy being ready and date of delivery—Whether can be deducted	g 12 N 18
	(ii) Copies despatched to wrong address and returned— Copies re-despatched to correct address— Period between date of despatch to wrong address and date of despatch to correct address to be excluded	S 12 N 18
	(iii) Period between date on which copy was ready and date of despatch—Whether can be excluded	B 12 N 18
	(iv) Time taken in transmission of copies by post cannot be excluded	S 13 N 18
	Delay caused by getting order varied and settled-Period, if	S 12 N 251
(z*)	such copy	S 12 N 19
(z ⁹)	Delay caused by separate applications for copies of judgment and decree—Effect of	S 12 N 13
	Delay in taking delivery—Time between date on which copy is ready and date nn which it is actually taken delivery of —Whether can be excluded	S 12 N 15
	(i) Sunday or Indiday succeeding day on which copies are ready—Special arrangement known to applicant made to deliver copies during holidays—Deduction of holiday, il can be claimed	S 12 N 15

Lim. 176

Exclusion of time-Exclusion of time for copies-Delay in taking copies-(Contd.)	delivery of
(11) Sunday or holiday succeeding day on which copies ready—Delivery taken next day—Sunday or holiday, if can be excluded	S 12 N 15
of its being ready and date of taking delivery to be excluded	S 12 N 15
munication to party of date on which copies are readly— Delay in taking delivery, if can be counted against bim {z ¹³ } Delay necessitated in obtaining copies—When can be	S 12 N 15
excused under S. 5 (z¹¹) Documents in respect of which exclusion should be made (z¹²) Exclusion, if can be claimed between signing of decree and	S 12 N 8 S 12 N 8
application for copies (z ¹⁶) Exclusion taken in prior infractuous proceedings.—Time	S 12 N 25
required to obtain copy of order in prior proceeding, if can be excluded	S 14 N 28
to deduct time taken for obtaining copy thereof if such order is actually prepared (218) Holidays intervening between dates of judgment and copy application—Party prevented from taking the necessary	S 12 N 7
stops for obtaining copies.—Whether time requisite for obtaining copies (z ¹⁹) Interval between judgment and signing of decree (j) Court refusing to pass decree till plaintiff complied	S 12 N 24
with certain orders—Date of decree is date of final judgment—Time runs from date of passing of decree (ii) Whether can be excluded as time requisite without	S 12 N 25
regard to date of application for copies (z ²⁰) Judgment delivered during holidays—Copy application filed not on re-opening day but some days after re-opening—	S 12 N 25
Holidays, if can be regarded as time requisite for obtaining copies (z ²¹) Judgment delivered during the time Court is closed for holidays—Copy application filed on re-opening date—Holidays,	S 12 N 24
if can be regarded as time requisite for obtaining copies (22) Judgment delivered on last day before closing of Court— Copy application made on re-opening date—Holidays, if to	S 12 N 24
to regarded as time requisite for obtaining copies (z ²²) No delay caused by applicant after making application— Whole period between date of application and date of copy	S 12 N 24
(z²) One common judgment in two suits—Two appeals filed ariths tent judgment in the two suits—Copy of judgment applied for only in one suit filed with appeal on it—Time	S 12 N 14
(2 ²³)	S 12 N 26
• •	S 12 N 29

S 13 N 14

's be accompanied by accompanied by innfter requisition by

(z²⁰) Rules of Court requiring application to he accompanied by deposit of each or stamps—Delay in furnishing cash or stamps or folios—Effect of ..., be accompanied by

Exclusion of time-Exclusion of time for copies-(Contd.)

Court—Time requisite for obtaining copy to be computed only from date on which deficiency was made up	S 13 N 14
(z23) Rules requiring party to take deficite steps to have decree drafted	
(i) Mere fact of application being made, whether entitles party to deduct all the time clapsing hefore date of copy being ready. (ii) Party delaying in making requisition or guilty of	S 12 N 25
lacbes-Delay, if forms part of time requisite for obtaiolog copies	S 12 N 25
(z ²⁰) Suit to cootest award of Board of Revenue—Time spent io obtaining copy of award, whether can be excluded	A 1 N 1
(z ³⁰) Time between date of application for copies and date of cotice of requisition for stamp and folios for copiesWhether to be excluded in computing period of limitation	S 12 N 23
(z ³¹) Time occupied io obtaioing copy of award—Whether ex- cluded in computing period of limitation for application to set aside award	A 158 N 6
(z ³²) Time occupied in obtaining copy of decree — Whether excluded from period of limitation for appeal from decree of High Court on Original Side	A 151 N 3
(2 ³³) Time occupied in obtaioiog copy of decree—Whether excluded from limitation for application for leave to appeal as pauper	A 170 N 3
(2 ³) Time occupied in obtaiolog copy of decree—Whatber excluded from limitation for application for leave to appeal to Privy Council	A 179 N 4
(z ³⁵) Time occupied in obtaining copy of judgment.—Whether excluded from period of limitation for appeal from decree of High Court on Original Side	A 151 N 3
(z ³⁶) Time occupied in obtaining copy of judgment—Whether excluded from limitation for application for leave to appeal to Privy Council	A 179 N 4
(z ³⁷) Time occupied in obtaining copy of order—Whether excluded from period of limitation for appeal from order of High Court on Original Side	A 151 N 3
(z ³) Time occupied in initiation copy of order of dismissal for default—Whether evcluded from limitation for application for setting aside dismissal	A 163 N 10
(z ²²) Time occupied in obtaining copy of report of sale officer— Whether can be evcluded from limitation for application to set aside execution sale	A 166 N 17
(z ^w) Time requisite (i) Application made to wrong person—Time spent, if can be considered as time requisite	S 13 N 11

Exclusion of time-Exclusion of time for copies-Time requisite-(C	ontd.)
(n) Determination-Court, if has discretion-Indulgence	
by way of extension can be granted not under S 12	0.10
but only under S. 5 (iii) Delay by the office or Court for which appellant is not	S 12 N 36
responsible—Whether can be excluded as being time	
requisite	S 12 N 10
(iv) Delay caused by appellant's carelessness or negligence,	11 10
if time requisite	S 12 N 10
(v) Period prior to application for copies cannot be	
	12 N 24, 25
(vi) Question what is the time requisite—How to be deter-	S 10 37 10
(vi) Time requisite, if always the time actually spent in	S 12 N 10
securing the copies	S 12 N 10
(z41) Time requisite for obtaining copies	
(1) Time requisite, what is-Evidentiary value of dates	
endorsed on certified copies	S 12 N,34
(11) Whether available only in case of appeals, applications for leave to appeal, applications for review and applica-	- = .
cations to set aside award	S 12 N 4
(III) Whether should be continuous	S 12 N 24
(z42) Time requisite in S. 12—Meaning of	S 12 N 10
Exclusion of time of defondant's absence from British India in	
computing limitation for suit	S 13
Exclusion of time of prior infructuous proceeding—Failure of prior proceeding must be due to defect of jurisdiction or other cause of	
proceeding must be due to detect of jurisdiction or other cause of	S 14 N 25
-Exclusion of time of proceeding bona fide in Court without	D 14 N 20
parisdiction	
(a) Another civil proceeding-Whether includes execution pro-	
ceedings in another suit	S 14 N 12
 (b) Another proceeding (1) Administration suit—Bona fide prosecution by credi. 	
tor of claim under deceased debtor's promissory note	
-Whether will be excluded in computing limitation	
for subsequent suit on promissory noto	S 14 N 12
(11) In S. 14-Meaning of-Prior proceeding, if must bave	
been in a different Court	S 14 N 12
(iii) Institution of suit against person who is dead before	
its institution—Legal representatives impleaded sub- sequently—S 14, if applies	C 14 37 40
(iv) Plaint presented in time subsequently ordered to be	S 14 N 12
returned for presentation to proper Court—Case, if	
one of another proceeding or of continuation of prior	
proceeding	S 14 N 12
(v) Plaint returned for presentation to proper Court for	
want of purisdiction—Plaintiff abandoning part of claim and presenting it to same Court after limitation	
Exclusion under S. 14, if can be claimed	S 14 N 12
(vi) Suit for rent in one Court—Suit dismissed on appeal	~ 13 14 12
on ground that Court had no inrisdiction - Court	
invested with purisdiction by that time-Fresh suit	

from relief for preparation of final decree ...
(r) Relief for possession under sale deed — Relief for damages or for return of purchase money in default of

possession—Relie's are different

(vi) Relief of possession is different from relief of declaration

(vii) Revision from Small Cause Court judgment—Whether for different relief from revision from infructuous prior appeal from previous decree of Small Cause Court in

same matter S14 N 19

(viii) Right to enforce sale and suit to set aside sale—Reliefs are different—Right to enforce sale is not suspended: S14 N 19

S 14 N 19

S 14 N 19

S 14 N 19

S 14 N 17

S 14 N 5

511 1 8

S 14 N 5

(ix) Suit and application to restore suit dismissed for default are not for same relief ... S 14 N 19

(x) Sait for injunction restraining defendant from entering property—Subsequent execution application for balance of decree amount against same property—

Reliefs are different

(d) Applications—Prior proceeding must relate to same relief—Prior proceeding, suit for mesan profits on dispossession for two years—Subsequent proceeding, application for mesne profits for four years inclusive in above two years—Exclusion under S. 14 will apply unly in respect of relief for mesne profits for the two years in common profits.

(e) Arbitrator — Proceeding before arbitrator — Arbitrator if should exclude time spent in prosecuting in good faith the same claim before arbitrator without jurisdiction ...

(f) Causes of a like nature in S. 14—Meaning of—Causes for which a withdrawal may be permitted—Whether causes of a like nature with defect of jurisdiction

(g) Circumstances contemplated in S. 14—Whether may be taken to constitute sufficient cause within S. 5

(b) Civil proceeding in Court (i) Land Registration Deputy Collector acting in matter for decision under Ss. 28, 29 or 42, Land Registra-

Exclusion of time—Exclusion of time of proceeding bona fide in Court without jurisdiction—Givil proceeding in Court—(Contd.)

The state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the s	
tion Act of Bihar-Whether a Court-Preceeding, if	0 - 1 - 1 - 0
civil preceeding	S 14 N 13
(ii) Officer acting in administrative or executive capacity —Whether Court—S. 14, if applies	S 14 N 13
(iii) Proceedings before arbitrator—Whether civil proceed-	D 14 14 10
ings in a Court	S 14 N 13
(iv) Revenue Coprts, if Coprts ander S 14	S 14 N 13
(v) Settlement officer or Commissioner of Board of Reve-	
nue in preparing or revising a record of rights -	
Whether a Court dealing with a civil proceeding	S 14 N 13
(i) Computation of period to be excluded—Dato of institution	
and of termination to be counted	S 14
(j) Conditions under which exclusion can be claimed	S 14
(k) Defect of jurisdiction	
(1) Court having no power to make an order—Whether means that it has no jurisdiction in the matter	S 14 N 23
(11) Court in which prior proceedings were pending erro-	D 14 H 20
neeusly thinking it had no jurisdiction — S. 14, if	
applies	B 14 N 25
(iii) Defect of jurisdiction may be territorial or in relation	
to the subject-matter	S 14 N 23
(iv) Dismissal of execution application for sale on ground	
that no decree under O. 34, R. 6, Civil P. C., bad	
been obtained-Dismissal, if on account of defect of	S 14 N 23
jurisdiction (v) Prior proceedings dismissed on merits or on ground	D 14 IN 25
that they were misconceived—Benefit of S. 14, if	
available	S 14 N 22
(vi) Prior proceeding pending in wrong Court on account	
of mistake of Court—S 14, if applies	8 14 N 25
(vii) Prior preceeding, plaint or application in, returned for	
presentation to proper Court—S. 14, if applies	S 14 N 25
(viii) That there were prior proceedings and they went against the plaintiff—Whether sufficient for appli-	
cability of S 14	S 14 N 22
(ix) Want of jurisdiction, if can arise after institution of	5 11 11 22
proceeding	S 14 N 23
(x) Whether covers defect due to laches of parties	S 14 N 23
(xi) Whether covers such mistakes as presentation and pro-	
	S 14 N 23
proper remedy—Institution of snit—Failure of appeal,	
proper remedy—Institution of suit—Failure of appeal, if due to a cause of like nature	S 14 N 24
if due to a cause of like nature (ii) Application for transfer of decree—Dismissal on ground	S 14 N 24
if due to a cause of like nature (ii) Application for transfer of decree—Dismissal on ground that it was time-barred and that judgment-debtor	S 14 N 24
if due to a cause of like nature (ii) Application for transfer of decree—Dismissal on ground that it was time-barred and that judgment-debtor had no property within the local limits of Court	
if due to a cause of like nature (ii) Application for transfer of decree—Dismissal on ground that it was time-harred and that judgment-debtor had no property within the local limits of Court which rassed the decree—Whether covered by S 14	S 14 N 24 S 14 N 22
if due to a cause of like nature (i) Application for transfer of decree—Dismissal on ground that it was time-barred and that judgment-debtor had no property within the local limits of Court which passed the decree—Whether covered by S 14 (ii) Decree-holder journey, in execution petition relief, not	
if due to a cause of like nature (ii) Application for transfer of decree—Dismissal on ground that it was time-harred and that judgment-debtor had no property within the local limits of Court which rassed the decree—Whether covered by S 14	

Exclusion of time—Exclusion of time of proceeding bona fide in Court without jurisdiction—Defect of jurisdiction or other cause, etc.—(Contd.)

reserved - Porcer of Jurisdiction of aluel, pulled, ere County	•/
(iv) Dismissal of application for execution oo ground that	
it was not in accordance with law.—Whether covered	
by S. 14	S 14 N 22
(v) Dismissal of suit on ground that plaintiff was oegligent	
-Whother covered by S. 14	S 14 N 23
(vi) Dismissal on finding that allegation of discharge of a	
decree sought to be executed is not proved.—Whether	
covered by S. 14	S 14 N 23
(vii) Dismissal on ground that alleged fraud is not proved	D 27 21 2-
	S 14 N 23
-Whether covered by S 14	D IX II 72
(viii) Dismissal on ground that plaintiffs not being cearest	
reversioners were not entitled to sue-Whether	S 14 N 23
covered by S. 14	D 14 14 22
(ix) Dismissal on ground that suit disclosed oo cause of	S 14 N 23
action—Whether covered by S. 14	S 14 N 22
(x) Dismissal on ground that claim in prior proceedings	
was premature—Whether covered by S. 14	S 14 N 23
(xi) Error of law-Proceeding by way of suit instead of	
making application for remedy Whether cause of a	
like nature	S 14 N 21
(xii) Grounds of dismissal not covered by S. 14-Illustra-	
tions	S 14 N 22
(xiii) Inability of Court to decide on lawfulness of plaiotiff's	
claim due to his wrongly framing his action-Whether	
involves cause of a like nature	S 14 N 24
(xiv) Misjoindor or non-joinder of person—Whether causo	
of a like nature	S 14 N 26
(xv) Mistako of party with regard to roliefs sought arising	
out of incompetence of his advisers—Whether cause	
of a like nature	S 14 N 24
(xvi) Other cause of a like nature—Meaning of	
(a) Cause, if should be always ooo which the plain-	S 14 N 21
tiff could have avoided	D 14 W
(b) Decree in a suit heiog vacated oo ground of non-	
service of summons - Whother other cause of a	S 14 N 24
liko naturo	5 14 11
(c) Dismissal of application for want of nocessary	
affidavit-Whether other cause of a like outure	S 14 N 24
to defect of prisdiction	5 11
(d) Dismissal of prior suit for default is not other	
eauso of a like oatoro to defect of jurisdic	S 14 N 21
tion ···	D 14 1,
(c) Dismissal resulting from plaintiff's own act or	
from bona fide mistake of law or procedure-	S 14 N 21
Whether other canse of a like cature	9 71
(f) Failure to obtain sanction necessary to try a suit	
relating partly to property outside jurisdiction-	S 14 N 21
Whether other cause of a like nature	
(g) Inability of Court to entertain former suit pro-	
duced by any cause not connected with want of	
good faith or due diligence in plaintiff — Whether	S 14 N 21
cause of a like nature to defect of jurisdiction	

GENERAL INDEX	2807
Exclusion of time—Exclusion of time of proceeding bona fide in Co jurisdiction—Defect of jurisdiction—Other cause of a like nature (h) Misjoinder of ponjoinder of parties is not other	urt without re—(Contd.,
cause of a like nature (1) Neglect or laches of plaintiff in stating or prosecuting bis case—Whether other cause of a	S 14 N 24
like nature (1) Non-suit of plaintiff for neglect to state the	S 14 N 2
boundaries of property—Whether other cause of a like nature (1) Plaintiff's mability to produce a registered certi- ficate of sale with the suit is not other cause of	S 14 N 24
a like nature (1) Present plaintiff having claimed the relief in the	S 14 N 24
prior sout in a wrong capacity—Whether other cause of a like nature	S 14 N 24
unvacated previous order on the matter is other cause of a like nature	S 14 N 24
(n) Test to ascertain if cause is of like nature to	0 21 21 21
defect of jurisdiction (o) Want of notice required by S 80, Civil Procedure Code, is not other cause of a like nature to	S 14 N 24
defect of jurisdiction	S 14 N 24
cause of a like nature (q) Wrong party sung—Whether other cause of a	S 14 N 24
like naturo within S 14	S 14 N 24
(xvii) Suit dismissed on the ground that it is not sustainable on a construction of a decree—Whether covered by S. 14	S 14 N 22
(xviu) Suit entertained and decided on ground of res judicata or limitation—S 14, if applies (xix) Suit entertained and decided on ground that award in	S 14 N 24
question was void and not binding—S 14, if applies. (xx) Suit for mere declaration—Consequential relief of possession not asked for—Dismissal of suit under	S 14 N 24
S 42. Specific Relief Act—Cause, if in the nature of defect of jurisdiction	S 14 N 24
(i) Amendment of plaint.—Jurisdiction becoming aftered to knowledge of plaintiff after amendment.—Plaint ie-presented as amended to same Court.—Plaintiff, if prosecuting suit with due diligence.	S 14 N 11
 (n) Creditor in insolvency neither opposing adjudication nor fling proof of claim—Subsequent suit on his debt —Period of pendency of insolvency proceedings, if 	
can be deducted	S 14 N 11
(iii) Fact that prior proceeding was filed on last day of limitation—Whether negatives due diligence	S 14 N 11
(iv) Plaint ordered to be returned—Party, when entitled to deduction of time taken in uppeal or revision against order	S 14 N 11

(v) Plaintiff non-suited for neglect to state boundaries of his land or to implead a necessary party-Proceedings,

(vi) Proceedings struck off for default of prosecution-Whether can be said to be carried on with due

(rii) Return of plaint for presentation to proper Court-Timo during which Court holds up the case-Whether

•••

S 14 N 11

S 14 N 11

S 14 N 11

if carried on with due diligence

jurisdiction - Due diligence - (Contd.)

diligenco

to he excluded ...

(viii) Some alone of the parties who could have prosecute prior proceedings engaged in these proceedings—Other	rs
who did not do so, if can claim benefit of S. 14	S 14 N 11
(u) Error of law	
(i) Claim petition against attachment wrongly describ as falling under O. 21 R. 58, Civit P. C., instead Sec. 47—Decree, holder filing claim suit misled i	of
mistako - Prosecution of claim suit and appea	la
therein is in good faith	S14 N 20
(ii) Prosecution of wrong proceeding induced by bona fie	ie .
mistako-Whether covered by S. 14	S14 N 20
(c) Exclusion of portion of the time	
(i) Prosecution in good faith and with due diligence of	pf.
execution of decree-Discovery that remedy was h	
suit and not by ovecution-Whole period from date	
decree to date of discovery of error, if can b	S 14 N 29
excluded (ii) Want of good faith or duo diligence during portion of	• :
the period—Whether will deprive party of the whole	
period	S 14 N 29
(p) For the same relief in S. 14-Relief elaimed in applicatio	p
not same as was claimed in prior proceeding-Illustrations	
(q) Cood faith	
(i) Bona fide ignorance of facts determining correct juris	S 14 N 20
diction—Whether covered by S. 14	
(11) Bona fide mistako of law, if sufficient ground for treatin	S 14 N 20
proceedings to be in good faith	;
(ni) Clearly unnecessary and unsustainable action should not be taken into account	
(iv) Error of law, if entitles party to benefit of S. 14	0.11 8 20
(v) Honest doubt as to whether a suit lies in one Court of	
another-Whether covered by the expression	5 14 11 -0
(vi) Law clearly requiring proceeding to be instituted in	1
Court-Party presenting it to Collector or Revenue	S 14 N 20
Officer-Whether can be credited with good faith	
(vii) Legal adviser's mistake—When consistent with good latth	S 14 N 20
(viii) Necessity of, for applicability of S. 14-Section will	1
not apply when party is guilty of laches, negligence	S 14 N 20
or inaction	5 22 2.
(ix) No clear indication in the law as to the preper pro-	
cedure-Party taking proceeding believed to be open	

Exclusion of time—Exclusion of time of proceeding bona fide in Court without jurisdiction—Good faith—(Contd.) to hum. Whether can be said to be wanting in good

to him-Whether can be said to be wanting in good	
faitb	S 14 N 20
(x) Party acting on legal advise bona fide believing action	
to be sustainable—Fact that Court considered prior	
proceeding as misconceived cannot by itself negative	
good faith	S 14 N 20
(xi) Party knowingly undervaluing subject matter of suit	
to suit a wrong forum-Whether consistent with good	
faith	S 14 N 20
(xii) Person not filing snit within one year from adverse	
order as provided in O. 21 R 63, Civil P. C -Insti-	
tution of appeal or revision from adverse order not	
under any mistake-Latter proceeding, if can be said	
to be prosecuted in good faith	S 14 N 20
(xin) Plaintiff wrongly valuing suit - Plaintiff acting bona	
fide—Return of plaint for want of jurisdiction—Case,	
if one of good faith	S 14 N 20
(xiv) Prosecution of application to sne as pauper made	~ I. I. 20
mala fide as to pauperism—Whether entitles party to	
benefit of S. 14	S 14 N 20
(xv) Prosecution of execution petition wrongly in Court of	~ == == ==
Subordinate Judge by negligenco-Previous petitions	
presented in Court of Munsifi whose decree it was-	
Prosecution, if in good faith	S 14 N 20
(xvi) Question of jurisdiction being an arguable one, whe-	
ther negatives good faith when party believed bona	
fide that the Court in which be instituted proceedings	
had jurisdiction	S 14 N 20
(xyii) Question whether a person has acted in good faith is	
one of fact	S 14 N 21
(xviii) Suit for possession decreed—Subsequent suit for mesne	
profits-Period occupied by proceeding for mesne	
profits by way of restitution under former decree-	
Whother can be deducted	S 14 N 20
(xix) What amounts to	S 14 N 20
(xx) Whether inference of good faith is reasonable or	
warranted by facts proved is a question of law	S 14 N 21
(xxi) Whether there can be bona fide mistake when party	
ought to have known the law	S 14 N 20
(xxii) Wrong choosing of forum duo to bona fide mistake of	
counsel-Whether consistent with good faith	S 14 N 20
(r) Good faith and due diligence in prosecuting prior proceeding	
-Want of good faith and due diligence for a portion of the	
period—Period to be deducted	S 14 N 29
(s) Holidays before commencement of period taken up by pro-	
cceding, whether to be excluded	S 14 N 7
(t) Non-mention of claim to exclusion of time under S 14, if	0 11 11
	S 14 X 30
	O 11 1 30
(u) Order for return of plaint made by Court—Plaint actually	
returned to party some time afterwards—Period of delay so	S 14 N 27
caused must be deducted	O 14 W 21

Exclusion of time—Exclusion of time of proceeding bona fide, etc. (v) Order returning the plaint undergoing first and second	.—(Contd.)
appeals-Period till final order in appeal and of remand, if	
1.1.1.1.1.1	S 14 N 27
(w) Other cause of a like nature in S. 14—Meaning of—Mis-	0 2-1
poinder of parties or of causes of action.—Whether cause of	S 14
a like nature with defect of jurisdiction	211
(x) Period of limitation after excluding period allowed under	
S. 14 falling on holiday—Effect—Suit or other proceeding,	0.4437.77
if may be filed on re-opening day	S 14 N 7
(v) "Period of limitation prescribed"—Mouning of	S 14 N 9
(z) Period of prosecution of such proceeding-Limitation, if	
suspended during that period	S 14 N 4
(z1) Plaint ordered to be returned for presentation to proper	
Court-Period between date of order and date on which	
plaint is made ready for return to be deducted	S 14 N 27
(z2) Plaintiff himself withdrawing suit under O. 23 R. 1, Civil	
D C C 1/ 11 1	5 14 N 8
(z ³) Plaintiff bonestly in doubt as to in which of two Courts bis	-
suit lies—Suit instituted in one Court with due care and	
Suit hes—Suit instituted in one Court with due care and	
caution-Wrong forum - Plaint roturned for presentation	S 14 N 8
to proper Court-S. 14, if applicable	S 14 N 5
(zi) Prior proceedings in foreign Court—Exclusion, if available	D 22 2.
(z) Prior proceeding pending before Court not having juridiction	
on date of second suit Period between institution of prior	S 14 N 25
suit and that of subsequent suit to be excluded	P 14 IV 20
(z0) Prior suit decreed in first Court but dismissed in appeal on	
ground mentioned in S. 14-Period from institution of suit	S 14 N 25
to be deducted when spent in good faith	S 14 N 22
(z ⁷) Proceeding in Court of Appeal	
(1) First Appellate Court holding against plaintiff on	
ground of want of jurisdiction—Whether disentitles	
him to claim deduction of time occupied by further	1 NT 14
appeal which was infructuous	S 14 N 14
(ii) Plaintiff, if can deduct period occupied by the litiga-	17 15
tion till its termination in a final Court of Appeal	S 14 N 15
(iii) Whether includes rovision proceedings in the High	
Court—Duration of rovision proceedings—Whether	S 14 N 14
can be excluded under S. 14	S 14 N 14
(z ⁵) Proceedings—Same parties	
(1) Both the proceedings must be between the same par-	S 14 N 16
ties or their representatives	S 14 N 16
(ii) Firm, if the same party as the individuals thereof	S 14 M 20
(iii) Prior suit against firm - Subsequent suit against	
surviving partners of firm and persons in possession	
of deceased partner's assets—Whether against samo	S 14 N 16
marties	2 14 11 20
(iv) Prior suit against Traffic Manager of Railway Company	
instead of the Secretary of State—Subsequent Built	S 14 N 16
against Secretary of State—Parties, if same	9 13 14
(v) Same person sping in different capacities.—Same person	
sung as administratrix of one estate in one suit and	
of the estate of a different person in another suit-	S 14 N 16
Whether by same plaintiff	2

Exclusion of time—Exclusion of time of proceeding bona fide, etc.—Proceedings, same parties—(Contd.)

bamo pareiga—(consul)	
(vi) Suit against persons supposed to be legal represent-	
atives of deceased debtor-Alter discovery of mistake	
proper legal representative brought in as defendant-	
Latter proceeding, if against same party as the	
former	S 14 N 16
(vii) Suit against surety noder bond for payment by judg- ment-debtor of plaintiff—Time during which plaintiff	
was taking out execution against judgment-debtor	
under decree Whether deductible	S 14 N 16
(viii) Suit by two plaintiffs—Third party impleaded as co-	0 11 11 10
plaintiff—Plaint returned for presentation to proper	
Court-Original plaintiffs alone suing in presenting to	
proper Court - Time taken up by prior suit - Whethor	
can be excluded under S. 14	S 14 N 16
(ix) Two suits against same defendant but in different	
capacities-Whether covered by S 14	S 14 N 16
(z ⁰) Proceedings to which S 14 is applicable	S 14 N 5
(z10) Prosecuting a proceeding—Meaning of—Third party pro- secuting an application to get a deed on which the decree	
is based set saids. Whether will save limitation running	
is based set aside—Whether will save limitation running	S 14 N 10
<i>1</i>	5 11 1, 10
sisting suit	
against him in prior suit—Plaintiff, il can be said to be	
prosecuting any proceeding against the other party	S 14 N 10
(ii) Plaintiff must have had in the pilor suit interests in	0 14 37 10
the nature of those of a plaintiff	S 14 N 10
(iii) Plaintiff obtaining ex parte docree in loreign Court— Subsequent suit in British Indian Court on foreign	
judgment — Period during which defendant was	
taking proceedings to have ex parte decree set aside-	
Whether can be excluded	S 14 N 10
(iv) Plaintiff or applicant resisting an appeal-Whether	
prosecuting a proceeding	S 14
(v) Resisting of appeal from decision in one's favour	S 14 N 10
 (vi) Suit by executant for declaration that promissory note was discharged — Period of pendency of suit, if can be 	
deducted in computing limitation for suit on pro-noto	
by payes	S 14 N 10
(vii) Suit by trustees of mosque for removal of manager	
and appointment of receiver-Claim by manager for	
money due-Decision that money was due - Appeal	
by trustees—Dismissal of suit for non-joinder of other trustees—Suit by manager for money — Period of	
prior litigation started by trustees—Whether can be	
excluded in computing limitation therefor	S 14 N 10
(z12) Provisions as to—Principle of S 14	S 14 N 2
(z13) Return of plaint—Period within which it should be presented	
to proper Court cannot be fixed by Court and such period	
(z11) Return of plaint ordered by Court — No period after actual	S 14 N 27
return on be deducted No period after actual	S 14 N 27
TOTALLE CIT DO RELIGIOSES 400	J 42 .1 21

2812	GENERAL INDEX	
	me—Exclusion of time of proceeding bona fide, etc.—	-(Contd.)
(i)	Application by creditor to bave debtor adjudged an insolvent—Wbetber on same cause of action as subsequent suit by him for decree on debt Application for restoration of snit dismissed for default of plaintiff — Fresh suit on alleged wrong done by	S 14 N 18
(iii)	defendant to plaintiff—Wbether on same cause of action Decree against one brother as member of a firm — Attachment—Objection by other brothers—Application for declaration that objectors were liable as partners—Application dismissed as barred—Sunt for declaration of decree holder's rights against objectors—Time occupied by application and appellate pro-	S 14 N 18
(iv)	ceedings—Whether can be deducted in computing limitation for suit Decree bolder attaching book debt due to judgment- debtor and purchasing it in court auction — Subse-	S 14 N 18
(v)	quent suit to recover book-debt is not on same cause of action as attachment Mutation proceedings before revenue authority — Application to Civil Court to have award as to family rights and property, filed and decreed upon—Whether	S 14 N 18
(vi)	same cause of action Proceeding before arbitrators based on agreement to refer to arbitration—Regular suit based on rights of parties after setting asido award—Causes of action are	S 14 N 18
(vii)	different Separate suits for recovery of specific portions of property in hands of cosharers—Suit for partition as against all cosharers—Whether on same cause of action	S 14 N 18
	Suit by mortgages in recover mortgage money on ground of deprivation of security—Suit for foreclosure or sale—Whether nn same cause of action	S 14 N 19
(1x <i>)</i>	Suit for accounts against defendant as broker in respect of cotton transactions alono—Subsequent suit against him as commission agent in respect of other commodities also and for dividends received on behalf of plaintiff—Causes of action are different	S 14 N 18
	Suit for ejectment of defendants as tenants in Rovenuo Court—Suit for ejectment of defendants as trespassors in Civil Court — Whether have same cause of action	S 14 N 18
	Suit for ejectment or possession and suit for rent have different causes of action	S 14 N 18
	for the same sum on settlement of accounts—Causes of action are different	S 14 N 18
	executed — Suits for rents against each defendant under separate contract by each — Whether on same cause of action	S 14 N 18

Olindran India	2010
Exclusion of time — Exclusion of time of proceeding bona fide, etc.—of action—(Contd.)	-Same cause
(xiv) Suit for second instalment on bond under the impres- sion that first instalment was barred.—Plaint returned for presentation to proper Contt.—Plaintiff including first instalment also in re-presenting suit.—Second suit is not saved by first so far as first instalment is	
concerned (xv) Suit in British Indian Court on foreign judgment con-	S 14 N 18
cerning promissory note — Snit on promissory note itself—Causes of action are different	S 14 N 18
(xvi) Suit in Malabar founded on kanom right and suit based on tenmi right — Whether have same cause of action (xvii) Suit to set asido award—Suit on promissory note oxe-	S 14 N 18
cuted in pursuance of award—Whether on same cause of action	S 14 N 18
(xviii) Time bona fide but infructuously taken in executing prior decree—Whether can be deducted under S 1:14 (xix) Time spent in carrying on wholly independent litingation founded on different causes of action—Whether	S 14 N 18
can be excluded (z ¹⁰) Second suit instituted in Court of proper jurisdiction —	B 14 N 18
suit instituted in a wrong Court	S 14 N 3 S 14 N 5 S 14 N 6
logous to defect of jurisdiction—Principle of S. 14, if applicable	S 14 N 2
(z ²⁰) Suit must be based on the same cause of action—Relief also must be the same	S 14 N 17
(z ²¹) Time required to obtain copy of order in prior proceedings —Whether can be excluded —Exclusion of time of proceeding bona fide in wrong Court	S 14 N 28
(a) 'Prosecuting a proceeding' in S 14 — Meaning of — Flaintiff obtaining decree for possession against defondant — Defen- dant filing suit to have decree set aside on ground of fraud — Plaintiff, it can oxclude the period of the suit in computing	
limitation for application by him for execution of his decree for possession	S 14 N 10
Civil Procedure Code (c) Time spent.—Whother can be evaluded in suit for relief on	A 152 N 9
ground of mistako Exclusion of time on ground of defendant's ab-once from British India	A 96 N 5
(a) Absence from British India at the time of accrual of cause of action or commencement of limitation—Exclusion, when	
ther can be allowed (b) Absonce from British India on several occasions — All such	S 13 N 4
periods of absence should be eveluded (c) Absence, if gives rise to mability or disability to sue on the	S 13 N 43
part of the plaintiff	S 13 N 2

Exclusion of time—Exclusion of time on ground of defendant's at British India—(Contd.)	sence from
(d) Absocce of some of several defendants—Effect of	S 13 N 5
(o) Burden of proof	S 13 N 8
(f) Defendant having duly authorized agent or maoager whom	
plaintiff could have sued — Whether disentitles plaintiff	
from claiming exclusion of period of defendant's absence from	
British India	S 13 N 4
(g) Defeodant leaving British India after the period of limitation	
commeoced to run-Applicability of S. 13	S 13 N 4
(h) Defendant paying occasional visits to British India during	
absence-S. 13, if rendored inapplicable	S 13 N 41
(1) Exclusion, if can be claimed in respect of applications for	
executioo	S 13 N 3
(1) Partnership - Suit against - Absonce of some partoers from	
British Iodia for certain period-Period can be excluded	
only as against those partners	S 13 N 5
(k) Period during which defendant is under imprisonment in	
British India—Exclusion of, if can be claimed	S 13 N 4
(1) Period of plaintiff's own absence from British India caonot	
be excluded	S 13 N 4
(m) Period of residence not of British India - Whether can be	
excluded independent of any question of knowledge of that	
fact by the plaintiff	S 13 N 6
(n) Plaintiff's ignorance of defendant's residence — Whether a	0 N C
ground of evaluation	S 13 N 6
(n) Procedure-Plaintiff should specifically plead and prove	
strictly that defendant was absent from British India	S 13 N 8
during the period	8 19 14 0
(p) Provisions as to	
(i) Coodition of applicability—Cause of action or transac-	
tion giving rise to it must have taken place in British	S 13 N 4
India	S 13 N 3
(ii) Whether affected ir qualified by S. 9	S 13 N 3
(iii) Whether apply unly to suits	S 13 N 2
(q) Question of stopping the runolog of time, if arises	3 15
(r) Suit against Secretary of State-Exclusion of time, if eac	S 13 N 4
be elaimed	510
(s) Territories beyond British Iodia under the administration of	
the Governmoot	
(1) Defeodant's absence at Basra—Period of absence can	S 13 N 7
be deducted	
(11) Meaoiog of Secunderabad is uodor the administration	S 13 N 7
nf the Government of India	
	S 15
-Notice to State Railway under Civil P. C., S. 80—Period of notice,	
whether excluded in suit against carrier for compensation for	
losing or injuring goods	A 30 N 6
— Period of notice of suit	
(a) Enactment for the time being in force—Meaning of —Enact-	S 15 N 23
ment must be in force in the place in which suit is filed	
(b) Notice determining a tenancy-Period of notice cannot be	S 15 N 19
excluded	3 10

(d) Notice only intended as information of the claim to defend ant—Period cannot be excluded: (e) Notice required in case of only one or some of the defendants—Period of notice, it can be excluded as against others also (f) Suit for possession instituted after 12 years of cause of action but within time by reason of exclusion of period of notice—Defendant cannot claim that title by adverse possession is perfected by sunt not having been instituted within 12 years of cause of action (g) Suit impleading Secretary of State or Public Officer unnecessarily and giving him notice of snit by mistate of law or fact—Plaintiff, if entitled to claim deduction as against private individuals against whom also suit is filed (h) Time can be excluded only where enactment requires that notice should be given of suit before its commencement. S. 12 applies only to applications and appeals referred to in the Act. S. 12 does not apply to proceedings in foreign Courts Stay of proceedings (a) Adjournment of case is not stay (b) Application for execution (c) Application for execution (d) Application for execution (e) Application for execution (i) Application for execution (i) Application for execution (ii) Time during which made owing to stay in another suit before a certain day before transferring decree —Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondeney of suit, if can be excluded: (a) Application for execution are subsequent application for execution—Period of pondeney of suit, if can be excluded: (a) Application for oxentand by transfer to another Court—Court ordering decree-bother to produce judgment in another suit before a certain day before transferring decree —Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondeney of suit, if can be excluded: (a) Application for execution are first application for execution—Si 5, if makes revial application a		
-Notice subsequently becoming unnecessary—Period of notice, it can be deducted	Exclusion of time-Period of notice of suit-(Contd.)	
-Notice subsequently becoming unnecessary—Period of notice, it can be deducted	(c) Notice necessary to be given by law at the time of giving it	
(d) Notice only intended as information of the claim to defend ant—Period cannot be excluded: (e) Notice required in case of only one or some of the defendants—Period of notice, it can be excluded as against others also (f) Suit for possession instituted after 12 years of cause of action but within time by reason of exclusion of period of notice—Defendant cannot claim that title by adverse possession is perfected by sunt not having been instituted within 12 years of cause of action (g) Suit impleading Secretary of State or Public Officer unnecessarily and giving him notice of snit by mistate of law or fact—Plaintiff, if entitled to claim deduction as against private individuals against whom also suit is filed (h) Time can be excluded only where enactment requires that notice should be given of suit before its commencement. S. 12 applies only to applications and appeals referred to in the Act. S. 12 does not apply to proceedings in foreign Courts Stay of proceedings (a) Adjournment of case is not stay (b) Application for execution (c) Application for execution (d) Application for execution (e) Application for execution (i) Application for execution (i) Application for execution (ii) Time during which made owing to stay in another suit before a certain day before transferring decree —Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondeney of suit, if can be excluded: (a) Application for execution are subsequent application for execution—Period of pondeney of suit, if can be excluded: (a) Application for oxentand by transfer to another Court—Court ordering decree-bother to produce judgment in another suit before a certain day before transferring decree —Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondeney of suit, if can be excluded: (a) Application for execution are first application for execution—Si 5, if makes revial application a		
dant—Period cannot be excluded (e) Notice required in case of only one or some of the defendants—Period of notice, if can be excluded as against others also (f) Sut for possession instituted after 12 years of cause of action but within tune by reason of exclusion of period of notice—Defendant cannot claim that title by adverse possession is perfected by sint not having been instituted within 12 years of cause of action (g) Suit impleading Secretary of State or Public Officer unnecessarily and giving him notice of suit by mistate of law or fact—Plaintiff, if entitled to claim deduction as against private individuals against whom also suit is filled (h) Time can be evaluded only where enactment requires that notice should be given of suit hefore its commencement. S. 12 applies only to applications and appeals referred to in the Act S. 12 does not apply to proceedings in foreign Courts Stay by injunction or order—What amounts to stay by injunction or order Stay of proceedings (a) Adjournment of case is not stay (b) Application for execution—Application for delivery of possession by auction-purchasers—Whether application for execution (1) Application for execution—Application for delivery of possession by auction-purchasers—Whether application for execution (1) Application for execution—Application for delivery of injunction or execution—Application for delivery of possession by auction-purchasers—Whether application for execution—Uniquent in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Court ordering decroe—bolder to produce judgment in another suit before a certain day before transferring decroe—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Court ordering decroe—budgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Court ordering decroe—budger to produce judgment in another suit before a certain day before		S 15 N 19
(e) Notice required in case of only one or some of the defendants—Period of notice, if can be excluded as against others also (1) Suit for possession instituted after 12 years of cause of action but within time by reason of exclusion of period of notice—Defendant cannot claim that title by adverse possession is perfected by sunt not having been instituted within 12 years of cause of action (2) Suit impleading Secretary of State or Public Officer unnecessarily and giving him notice of sait by mistake of law or fact—Plaintiff, if entitled to claim deduction as against private individuals against whom also suit is filed (b) Time can be excluded only where enactment requires that notice should be given of suit hefore its commonement. 5. 12 applies only to applications and appeals referred to in the Act 5. 12 does not apply to proceedings in foreign Courts 5. 12 happlies only to applications and appeals referred to in the Act 5. 12 happles only to applications and appeals referred to in the Act 5. 12 happles only to applications and appeals referred to in the Act 5. 12 happles only to application for delivery of possession by auction-purchasers—Whether application for execution (1) Application for execution (2) Application for execution (3) Application for execution (4) Application for execution (5) Application for execution (6) Application for oxecution by transfer to another Court—Court ordering decree-bolder to produce judgment in another suit before a certain day before transferring decree —Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—S. 15, 16 makes revial application a fresh application for execution—(1) Attachment of book-delt or bond — Whether operates as injunction or stay (3) Attachment of decree—Whether operates as injunction or stay (4) Decision between same parties in prior execution application as to tho applicability of S 15—Whether operates as res judicata (5) Decree of first Court restored by order of		
dants—Teriod of notice, if can be excluded as against others also (f) Surt for possession instituted after 12 years of cause of action but within time by reason of exclusion of period of notice—Defendant cannot claim that title by adverse possession is perfected by surt not having been instituted within 12 years of cause of action. (g) Suit impleading Secretary of State or Public Officer unnecess sarily and giving him notice of suit by mistake of law or fact—Plaintiff, if entitled to claim deduction as against private individuals against whom also suit is filled S. 12 applies only to applications and appeals referred to in the Act. S. 12 applies only to applications and appeals referred to in the Act. S. 13 applies only to applications and appeals referred to in the Act. S. 14 applies only to application and suction—which is a succession by auction—purchasers—Whether application for execution of execution—What amounts to stay by injunction or execution within S. 15 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16 in 16		S 15 N 19
chhers also (f) Suit for possession instituted after 12 years of cause of action but within time by reason of exclusion of period of notice—Defendant cannot claim that title by adverse possession is perfected by suit not having been instituted within 12 years of cause of action (g) Suit impleading Secretary of State or Public Officer unnecessarily and giving him notice of suit by mistate of law or fact—Plaintiff, if entitled to claim deduction as against private individuals against whom also suit is filed (h) Time can be excluded only where onactment requires that notice should be given of suit hefore its commoncement. S. 12 does not apply to proceedings in foreign Courts —Stay of proceedings (a) Adjournment of case is not stay (b) Application for execution — Application for delivery of possession by auction-purchasers—Whether application for execution (i) Application for execution (i) Application for execution (ii) Application for execution (iii) Time during which made owing to stay in computing limitation under Art 181 (d) Application for oveneution by transfer to another Court—Court ordering decree-holder to produce judgment in another suit before a certain day before transferring decree—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondency of suit, if can be excluded: (a) Application for ovenetion as the tone pulcability of S 15-N 15 S 15 N 15 S 15 N 25 S 15 N 25 S 15 N 26 S 15 N 26 S 15 N 26 S 15 N 27 S 15 N 27 S 15 N 27 S 15 N 29 S 15 N 29 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N 20 S 15 N	(e) Notice required in case of only one or some of the defen-	
(f) Surt for possession instituted after 12 years of cause of action but within time by reason of exclusion of period of notice—Defendant cannot claim that title by adverse possession is perfected by surt not having been instituted within 12 years of cause of action. (g) Suit impleading Secretary of State or Public Officer unnecess sarily and giving him notice of suit by mistate of law or fact—Plaintiff, if entitled to claim deduction as against private individuals against whom also suit is filled		C 15 N 00
action but within time by reason of exclusion of period of notice—Defendant cannot claim that title by adverse possession is perfected by suit not having been instituted within 12 years of cause of action (g) Suit impleading Secretary of State or Public Officer unnecessarily and giving him notice of suit by mistate of law or fact—Planniff, if entitled to claim deduction as against private individuals against whom also suit is filed (h) Time can be excluded only where enactment requires that notice should be given of suit hefore its commoncement. (h) Time can be excluded only where enactment requires that notice should be given of suit hefore its commoncement. S. 12 does not apply to proceedings in foreign Courts S. 12 does not apply to proceedings in foreign Courts Stay by injunction or order—What amounts to stay by injunction or order Stay of proceedings (a) Adjournment of case is not stay (b) Application for execution (c) Application for execution (i) Application for execution (ii) Application for execution (iii) Time during which made owing to stay in computing limitation under Art 161 (a) Application for ovention by transfer to another Court—Court ordering decreo—Judgment in that suit passed at a much later date and honce not produced in time—Subsequent application for execution—Period of pondency of suit, if can be excluded: (a) Application for ovention by transfer to another Court—Court ordering decreo—Uniquent in that suit passed at a much later date and honce not produced in time—Subsequent application for execution—Period of pondency of suit, if can be excluded: (a) Application for ovention a fresh application for execution—S. 15, if makes revial application a fresh application for execution—S. 15, if makes revial application a fresh application for execution—S. 15, if makes revial application a fresh application for execution—S. 15, if makes revial application as fresh application for execution—S. 15, if makes revial application as fresh application for execution—S. 15, if makes revial	(1) Sout for recognism metatoted after 19 years of gauss of	5 15 N 20
notice—Defendant cannot claim that title by adverse possession is perfected by sunt not having been instituted within 12 years of cause of action (g) Sult implicating Secretary of State or Public Officer unnecessarily and giving him notice of sait by mistake of law or fact—Plaintiff, if entitled to claim deduction as against private individuals against whom also suit is filed in the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control o		
session is perfected by suit not having been instituted within 12 years of cause of action (g) Suit impleading Secretary of State or Public Officer unnecessarily and giving him notice of sait by mistake of law or fact—Plaintiff, if entitled to claim deduction as against private individuals against whom also suit is filed (h) Time can be excluded only where one actment requires that notice should be given of suit before its commonement. —5. 12 applies only to applications and appeals referred to in the Act —5. 12 applies only to applications and appeals referred to in the Act —5. 12 applies only to applications and appeals referred to in the Act —5. 12 does not apply to proceedings in foreign Courts —5. 12 applies only to applications and appeals referred to in the Act —5. 12 applies only to application for case is not stay (a) Application for execution—Application for delivery of possession by auction-purchasers—Whether application for execution (i) Application for execution (i) Application for execution (ii) Time during which made owing to stay in computing limitation under Art 161 (a) Application for execution by transfer to another Court—Court ordering decroe—bolder to produce judgment in another suit before a certain day before transfering decroe—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—(i) Attachment of book-delt or bond — Whether operates as injunction or stay (g) Attachment of decree—Whether operates as injunction or stay (h) Decision between same parties in prior execution application as to the applicability of S 15—Whether operates as rest judicata (i) Decree of first Court restored by order of remand—Injunc-	notice—Defendant cannot claim that title hy adverse nos-	
(g) Suit impleading Secretary of State or Public Officer unnecessarily and giving him notice of smit by mistake of law or fact—Plaintiff, if entitled to claim deduction as against private individuals against whom also suit is filed		
sarily and giving him notice of suit by mistake of law or fact—Plantiff, if entitled to claim deduction as against private individuals against whom also suit is filed (h) Time can be excluded only where enactment requires that notice should be given of suit before its commoncement. S. 12 applies only to applications and appeals referred to in the Act S. 12 does not apply to proceedings in foreign Courts —Stay of proceedings (a) Adjournment of case is not stay (b) Application for execution — Application for delivery of possession by auction-purchasers—Whether application for execution within S. 15 (c) Application for execution (d) Application for execution (i) Application for final decree in mortgage suit is not application for execution (ii) Application for execution (iii) Time during which made owing to stay in computing limitation under Art 181 (d) Application for occention by transfer to another Court—Court ordering decree-holder to produce judgment in another suit before a certain day before transferring decree —Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—(i) Application to review an application for execution—(i) Attachment of book-delt or bond — Whether operates as injunction or stay order (h) Decision between same parties in prior execution application as to tho applicability of S 15—Netter operates as rest judicata (i) Decree of first Court restored by order of remand—Injunc-	within 12 years of cause of action	S 15 N 21
inct—Plantiff, it entitled to claim deduction as against private individuals against whom also suit is filled (h) Time can be evoluded only where enactment requires that notice should be given of suit before its commencement S. 12 applies only to applications and appeals referred to in the Act S. 12 does not apply to proceedings in foreign Courts Stay by injunction or order—What amounts to stay by injunction or order Size of proceedings (a) Adjournment of case is not stay (b) Application for execution — Application for delivery of possession by auction-purchasers—Whether application for execution (i) Application for execution (ii) Application for execution (iii) Time during which made owing to stay in computing limitation under Art 181 (a) Application for overention by transfer to another Court—Court ordering decree—budgenet in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Quigment in that suit passed at a much later date and hence on produced in time—Subsequent application for execution—S. 15, if makes revival application a fresh application for execution—S. 15, if makes revival application a fresh application for execution—S. 15, if makes revival application as the stay order of stay order of stay order of stay order of first Court restored by order of remand—Injunc- S15 N 25	(g) Suit impleading Secretary of State or Public Officer unneces.	
private individuals against whom also suit is filed (h) Time can be excluded only where ennetment requires that notice should be given of suit before its commencement S. 12 applies only to applications and appeals referred to in the Act S. 12 aloes not apply to proceedings in foreign Courts S. 12 applies only to apply that it is a simple to proceedings or order S. 12 applies only to apply to proceedings in foreign Courts S. 12 applies only to apply to proceedings in foreign Courts S. 12 applies only to apply to proceedings in foreign Courts S. 12 applies only to apply to proceedings in foreign Courts S. 12 applies only to apply to proceedings in foreign Courts S. 12 applies only to apply to proceedings in foreign Courts (a) Application for execution — Application for delivery of possession by auction-purchasers—Whether application for execution — (a) Application for execution — (b) Application for execution (a) Application for execution (b) Application for execution (c) Application for execution (d) Application for occention by transfer to another Court—Court ordering decreo-bolder to produce judgment in another suit before a certain day before transferring decreos—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—(b) Application to review an application for execution—(c) Attachment of book-delt or bond — Whether operates as injunction or stay order (b) Decision between same parties in prior execution application as to the applicability of S 15—Whether operates as rest sudactan (c) Decree of first Court restored by order of remand—Injunc-	sarily and giving him notice of snit by mistake of law or	
(h) Time can be excluded only where enactment requires that notice should be given of sut before its commencement. —S. 12 applies only to applications and appeals referred to in the Act —S. 12 does not apply to proceedings in foreign Courts —Stay by injunction or order—What amounts to stay by injunction or order —Stay by injunction or order—What amounts to stay by injunction or order —Stay of proceedings (a) Adjournment of case is not stay (b) Application for execution — Application for delivery of possession by auction-purchasers—Whether application for execution (i) Application for execution (ii) Application for execution (iii) Time during which made owing to stay in computing huntation under Art 181 (a) Application for overation by transfer to another Court—Court ordering decree—budgened in another suit before a certain day before transfering decree—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondency of suit, if can be excluded: (a) Application to revive an application for execution—S. 16, if makes revival application a fresh application for execution—C. Application or stay (g) Attachment of book-debt or bond — Whether operates as injunction or stay order (h) Decision between same parties in prior execution applications as to the applicability of S. 15—Whether operates as rest judicata (i) Decree of first Court restored by order of remand—Injunc-		C 45 37 00
notice should be given of suit before its commonement \$15 N if supplies only to applie atoms and appeals referred to in the Act \$12 does not apply to proceedings in foreign Courts \$12 N in supplies only to applie atoms or order	private individuals against whom also suit is filed	5 15 N 20
S. 12 applies only to applications and appeals referred to in the Act S. 12 does not apply to proceedings in foreign Courts Stay by injunction or order—What amounts to stay by injunction or order Stay of proceedings (a) Adjournment of case is not stay (b) Application for execution — Application for delivery of possession by auction-purchasers—Whether application for execution within S. 15 (c) Application for execution (i) Application for execution (i) Application for execution (ii) Application for execution (iii) Time during which made owing to stay in computing limitation under Art 181 (d) Application for ovention by transfer to another Court—Court ordering decree—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Veriod of pondency of suit, if can be excluded: (a) Application to revive an application for execution—Period of pondency of suit, if can be excluded: (a) Application to revive an application for evecution (b) Attachment of book-debt or bond — Whether operates as injunction or stay (c) Attachment of book-debt or bond — Whether operates as injunction or stay order (d) Decision between same parties in prior execution applications as to the applicability of S 15—Whether operates as res judicata (i) Decree of first Court restored by order of remand—Injunc-	notice should be given of suit before its commencement	S 15 N 19
S. 12 does not apply to proceedings in foreign Courts Stay by injunction or order—What amounts to stay by injunction or order Stay of proceedings (a) Adjournment of case is not stay (b) Application for execution—Application for delivery of possession by auction-purchasers—Whether application for execution within S. 15 (c) Application for execution (i) Application for execution (ii) Application for execution (ii) Application for execution (iii) Time during which made owing to stay in computing limitation under Art 181 (d) Application for ovecation by transfer to another Court—Court ordering decree-holder to produce judgment in another suit before a certain day before transferring decrees—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondency of suit, if can be excluded: (a) Application to review an application for execution—S. 15, if makes revial application a fresh application for execution of stay (ii) Attachment of docree—Whether operates as injunction or stay (iii) Decision between same parties in prior execution application as to the applicability of S 15—Whether operates as rest judicata (ii) Decree of first Court restored by order of remand—Injunc-		
Stay by injunction or order—What amounts to stay by injunction or order Stay of proceedings (a) Adopternment of case is not stay (b) Application for execution — Application for delivery of possession by auction-purchasers—Whether application for execution within S. 15 (c) Application for execution — Application for delivery of execution within S. 15 (d) Application for final decreo in mortgage suit is not application for execution (ii) Application for execution (ii) Application for execution (ii) Time during which made owing to stay induction or stay or (iii) Time during which made owing to stay (d) Application for oxecution by transfer to another Court—Court ordering decreo-Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of ponderey of suit, if can be excluded: (e) Application to review an application for execution—S. 15, if makes revial application a fresh application for execution or stay (g) Attachment of docreo—Whether operates as injunction or stay order (h) Decision between same parties in prior execution application as to the applicability of S 15—Newthere operates as rest judication (i) Decree of first Court restored by order of remand—Injunc-		
cor order		
Stay of proceedings (a) Adjournment of case is not stay (b) Application for execution — Application for delivery of possession by auction-purchasers—Whether application for execution within S. 15 (c) Application for execution (i) Application for execution (i) Application for faceution in mortgage suit is not application for execution (ii) Application for execution (ii) Application for execution (iii) Time during wheth made owing to stay in junction or stay or (iii) Time during wheth made owing to stay in another suit before a certain day before transferring decrees—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of ponderey of suit, if can be excluded: (a) Application to review an application for execution—S. 15, if makes revial application a fresh application for execution of stay order (b) Decision between same parties in prior execution application as to the applicability of S 15 N 25 S 15 N 26 S 15 N 14 S 15 N 14 S 15 N 14 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 15 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16 N 16 S 16		8 15 N 6
(a) Adjournment of case is not stay (b) Application for execution — Application for delivery of possession by auction-purchasers—Whether application for execution in (c) Application for execution in (d) Application for execution (i) Application for execution (ii) Application for execution (iii) Application for execution (iii) Time during which made owing to stay in computing huntation under Art 181 (a) Application for oxecution by transfer to another Court—Court ordering decree—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondency of suit, if can be excluded: (a) Application to review an application for execution—Period of pondency of suit, if can be excluded: (b) Application to review an application for execution—Office the produced in the suit passed at a much later date and hence not produced in time—Subsequent application for execution—Office the produced in the produced in the suit passed at a much later date and hence not produced in time—Subsequent application for execution—Office execution—Office the produced in the produced in time—Subsequent application for execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution—Office execution		D 20 11 0
possession by auction-purchasers—Whether application for execution within S. 15 (c) Application for execution (i) Application for final decree in mortgage suit is not application for execution (ii) Application need not have been pending at date of injunction or stay of (iii) Time during which made owing to stay in computing limitation under Art 181 (d) Application for ovecation by transfer to another Court—Court ordering decree—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondency of suit, if can be excluded: (a) Application to revive an application for execution—Period of pondency of suit, if can be excluded: (a) Application to revive an application for evecution (b) Attachment of book-debt or bond — Whether operates as injunction or stay order (c) Attachment of doce-e—Whether operates as injunction or stay order (d) Decision between same parties in prior execution applications as to the applicability of S 15—Whether operates as res judicata (i) Decree of first Court restored by order of remand—Injunc-	(a) Adjournment of case is not stay	S 15 N 14
execution within S. 15 (c) Application for execution (1) Application for execution (1) Application for execution (2) Application for execution (3) Application for execution (4) Application for execution (5) If M. 26 (6) If M. 27 (7) If M. 27 (8) Application or stay or the form of the made owing to stay (8) Application for overeiton by transfer to another Court— Court ordering decree-holder to produce judgment in another suit before a certain day before transferring decree— —Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of producery of suit, if can be excluded: (a) Application to review an application for execution—S. 15, if makes revial application a fresh application for execution (b) Attachment of docree—Whether operates as injunction or stay (c) Attachment of decree—Whether operates as injunction or stay order (b) Decision between same parties in prior execution application as to the applicability of S 15—Whether operates as resignalized. (c) Decree of first Court restored by order of remand—Injunc-	(b) Application for execution - Application for delivery of	
(c) Application for execution (1) Application for final decree in mortgage suit is not application for execution (2) Application for execution (3) Application need not have been pending at date of injunction or stay or (3) Time during which made owing to stay (3) Application for ovecation by transfer to another Court—Court ordering decree—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondency of suit, if can be excluded: (a) Application to revive an application for execution—S. 15, if makes revival application a fresh application for execution—S. 15, if makes revival application a fresh application for evecution (1) Attachment of book-delif or bond — Whether operates as injunction or stay order (a) Decision between same parties in prior execution application as to the applicability of S 15—Whether operates as res judicata (i) Decree of first Court restored by order of remand—Injunc-		
(1) Application for final decree in mortgage suit is not application for execution		S 15 N 5
application for execution (ii) Application need not have been pending at date of injunction or stay or (iii) Time during which made owing to stay or (iii) Time during which made owing to stay in ecomputing limitation under Art 181 (ii) Application for oveention by transfer to another Court—Court ordering decree—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondency of suit, if can be excluded: (i) Application for revire an application for execution—S. 15, if makes revival application a fresh application for execution. S. 15, if makes revival application a fresh application for execution (I) Attachment of book-deht or bond — Whether operates as injunction or stay order (ii) Decision between same parties in prior execution application as to the applicability of S 15—Whether operates as res judicata (i) Decree of first Court restored by order of remand—Injunc-		
(i) Application need not have been pending at date of injunction or stay or ' (ii) Time during which made owing to stay in computing limitation under Art 181 (d) Application for ovecation by transfer to another Court—Court ordering decree-holder to produce judgment in another suit before a certain day before transferring decree—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondency of suit, if can be excluded: (a) Application to review an application for execution—S. 15, if makes revial application a fresh application for execution—() Attachment of book-delt or bond—Whether operates as injunction or stay	the second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second secon	S 15 N 5
injunction or stay of (iii) Time during which made owing to stay in computing limitation under Art 181 (d) Application for oveention by transfer to another Court— Court ordering decree-holder to produce pudgment in another suit before a certain day before transferring decree —Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondency of suit, if can be excluded: (o) Application to revive an application for execution—S. 15, if makes revival application a fresh application for execution (1) Attachment of book-delt or bond — Whether operates as injunction or stay (g) Attachment of decree—Whether operates as injunction or stay order (h) Decision between same parties in prior execution applica- tion as to the applicability of S 15—Whether operates as res judicata (i) Decree of first Court restored by order of remand—Injunc-	(11) Application need not have been pending at date of	510110
made owing to stay in computing limitation under Art 181 (d) Application for ovecution by transfer to another Court— Court ordering decree-bolder to produce judgment in another suit before a certain day before transferring decree —Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondency of suit, if can be excluded: (a) Application to revive an application for execution—S. 15, if makes revival application a fresh application for executions (i) Attachment of book-debt or bond — Whether operates as injunction or stay (g) Attachment of decree—Whether operates as injunction or stay order (h) Decision between same parties in prior execution applica- tion as to the applicability of S 15—Whether operates as res judicata (i) Decree of first Court restored by order of remand—Injunc-	injunction or stay or	S 15 N 5
in computing limitation under Art 181 (a) Application for occention by transfer to another Court— Court ordering decroe-holder to produce judgment in another suit before a certain day before transferring decroe—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of poudency of suit, if can be excluded: (a) Application to revive an application for execution—S. 15, if makes revial application a fresh application for execution—() Attachment of book-debt or bond—Whether operates as injunction or stay		
(a) Application for oxeention by transfer to another Court— Court ordering decreo-holder to produce judgment in another suit before a certain day before transferring decreo—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondeney of suit, if can be excluded: (a) Application to revive an application for execution—S. 15, if makes revival application a fresh application for execution—S. 15, if makes revival application as fresh application for executions (1) Attachment of book-debt or bond—Whether operates as injunction or stay order (a) Attachment of decree—Whether operates as injunction or stay order (b) Decision between same parties in prior execution applications as to the applicability of S. 15—Whether operates as res judicata (c) Decree of first Court restored by order of remand—Injunc-		
Court ordering decroe-bolder to produce judgment in another suit before a certain day before transferring decroe—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondency of suit, if can be excluded: (a) Application to revive an application for execution—S. 15, if makes revival application a fresh application for execution—() Attachment of book-debt or bond—Whether operates as injunction or stay		S 15 N 5
another suit before a certain day before transferring decree —Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondency of suit, if can be excluded: (a) Application to revive an application for execution—S. 16, if makes revival application a fresh application for execution (b) Attachment of book-debt or bond—Whether operates as injunction or stay (c) Attachment of decree—Whether operates as injunction or stay order (b) Decision between same parties in prior execution applica- tion as to the applicability of S 15—Whether operates as res judicata (i) Decree of first Court restored by order of remand—Injunc-		
—Judgment in that suit passed at a much later date and hence not produced in time—Subsequent application for execution—Period of pondency of suit, if can be excluded: (a) Application to revive an application for execution—S. 15, if makes revival application a fresh application for execution—S. 15, in makes revival application a fresh application for execution—S. 15, in 12 (2) Attachment of book-debt or bond — Whether operates as injunction or stay		
execution—Period of pondency of suit, if can be excluded: (a) Application to revive an application for execution—S. 15, if makes revival application a fresh application for execution (f) Attachment of book-deht or bond — Whether operates injunction or stay		
(a) Application to revire an application for execution—S. 15, if makes revival application a fresh application for execution (f) Attachment of book-deht or bond—Whether operates as injunction or stay	hence not produced in time-Subsequent application for	
makes revival application a fresh application for execution (1) Attachment of book-deht or bond — Whether operates as injunction or stay (2) Attachment of decree—Whether operates as injunction or stay order (3) Decision between same parties in prior execution application as to the applicability of S 15—Whether operates as res judicata (3) Decree of first Court restored by order of remand—Injunc-	execution-Period of pondency of suit, if can be excluded:	S 15 N 13
(f) Attachment of book-deht or bond — Whether operates as injunction or stay		
injunction or stay	(f) Attachment of book debt or hand Whether country	S 15 N 18
(g) Attachment of decree—Whether operates as injunction or stay order		S 15 N 10
stay order (h) Decision between same parties in prior execution application as to the applicability of S 15—Whether operates as res judicata S 15 N 29 (i) Dectee of first Court restored by order of remand—Injunc-	(g) Attachment of decree—Whether operates as injunction or	5 10 M 12
tion as to the applicability of S 15—Whether operates as res judicata (i) Decree of first Court restored by order of remand—Injunc.	stay order	S 15 N 12
res judicata S 15 N 24 (i) Decree of first Court restored by order of remand—Injunc-		
(i) Decree of first Court restored by order of remand-Injunc-		
		S 15 N 24
and bready of the course in the course		S 15 X 17
	too passed by title court	· · · · · · ·

(1) Absolute stay rendering decree-holder incapable of taking out any execution of the decree is contemplated by S. 15

ing stay or giving time made-Whether amounts to S 15 N 9

Exclusion of time-Stay of proceedings-(Contd.) (i) Execution

stay of execution	S 15 N 10
(ni) Order for stay against nne judgment debtor alooe—	., 20 2. 10
Whether operates as stay against other judgment-	
debtors	S 15 N 9
(1v) Order graoting time to judgment-debtor to pay-	
Whether amounts to stay nrder	S 15 N 10
(v) Order staying execution sale pending disposal of ques.	
tions raised in pending execution petition.—Whether	S 15 N 9
stay of execution proceedings within S. 15	B 19 W 9
(vi) Order that decree bolder should wait and not proceed	
against properties of judgment-debtor — Whether operates as stay of execution against surety for judg-	
ment.debtor	S 15 N 9
(vii) Stay in one particular mode leaving it open to decree.	
holder to execute in any other mode - Whether	
amounts to stay of execution within S. 15	B 15 N 9
(viii) Stay of execution of part of the decree or as against	
particular property - Whether saves limitation for	S 15 N 9
execution of decree as a whole	P 10 M a
(k) Froal decree in mortgage snit eet aside io appeal agaiost	
some defoodants—Case ordered to be retried—Court strik-	
ing off execution application against other defendants until	
liability of former defendants was finally settled—Order, if operates as stay of execution	S 15 N 13
 Injunction graoted by first Court—Suit dismissed in first appeal for misjoinder—Case remanded for disposal on merits 	
on second appeal—Order of remand is not tantamount to	
issue of injunction	S 15 N 17
(m) Injunction granted "pending final decision of the suit"-	S 15 N 17
Effect of	S 15 N 11
(n) Injunction granted until decision of suit—Decision, if means	
final decision in the litigation by final Court of Appeal or	S 15 N 17
Revision (o) Injunction restraining decree holder from executing decree	
for principal—Whether debars him from realizing interest:	S 15 N 9
(p) Insolvency Court actually passing order amounting to injunc-	
tion or stay—S. 15, if applies	S 15 N 8
(q) Insolveney, if operates as stay or injunction	S 15 N 8
(r) Insolvency proceedings, pendoncy of-Refusal of leave to	
ereditor to file suit or application-Whether amounts to	S 15 N 8
order granting injunction or stay within S. 15	9 19 14 0
(4) Institution of collateral suit or proceeding, if operates as	S 15 N 11
stay—Illustrations	9 10 11 11
(t) Institution of collateral suit or proceeding in respect of	
decree or its subject matter. Whether aperates as stay of execution of decree within S. 15	S 15 N 11
e recution of decree within S. 19	

	2011
Exclusion of time—Stay of proceedings—(Contd.)	
(n) Only period during which person is actually interdicted by	
injunction or order will be excluded	S 15 N 2
(v) Order allowing execution no condition of security being	
inrnished—Furnishing of security found impossible—Order	
operates as stay of execution	S 15 N 13
(w) Order allowing execution only on condition-Order, if	
operates as stay of execution	S 15 N 13
(x) Order of attachment probabiliting execution by anybody or accompanied by stay order—S 15, if applies	
accompanied by stay order—S 15, if applies (y) Period of pendency of appeal from decree—Whether can be	S 15 N 12
excluded in computing limitation for application for execu-	
tion of decree	S 15 N 15
(z) Preferring of appeal, if amounts to order granting injunction	- 20 21 20
or stay ··· ··· ···	S 15 N 15
(z1) Principle of S. 15	S 15 N 2
(z2) Revival of pending application-S. 15, if affects right to	
apply for revival	S 15 N 18
(z3) Several interrupted periods of interdiction—Party cannot	
exclude time during which no stay or injunction is in force :	S 15 N 2
(z4) Stay by agreement of parties—S 15 does not apply	S 15 N 7
(z ⁵) Stay by injunction or order	
(1) Acceptance of a decree by Court as security for costs	
decree es saying execution of enen	S 15 N 6
(ii) Order of Court for taxation of solicitor's costs against	2 19 14 9
client—Whether bar to institution of suit by colicitor	
against client for costs	S 15 N 6
(iii) Order of Court must clearly operate as injunction or	
etay of execution	S 15 N 6
(1v) Order staying delivery ni possession to court auction	
purchaser of property purchased by him-Whetber amounts to injunction preventing institution of suit	
for mesne profits against person in wrongful posses.	
gion of the property	S 15 N 6
(v) Parties consenting that stay order or injunction should	D 20 11 U
he granted—Court passing order on such consent	
granting injunction or stay-Order, if covered by	
8. 15	S 15 N 7
(vi) Period during which injunction or order is in force to be excluded	0.15.22.5
(vii) S 15 does not refer to disability to sue nr apply except	S 15 N 6
by order of Court	S 15 N 6
(z ⁹) Stay of execution pending cross-suit by judgment-debtor against decree-holder—Injunction "until the pending suit	0 10 11 0
against decree-holder-Injunction "until the pending suit	
has been decided"-Whether means until suit is finally	
decided	S 15 N 17
(z²) Stay or injunction in respect of execution granted by Court in a suit or proceeding—Dismissal of suit or proceeding—	
Stay, if terminates on such dismissal or continues during	
pendency of appeal in suit	S 15 N 17
(z8) Stay ordered on condition of furnishing security-Security	~ 40 41 11
tendered, accepted and given finally only on later date Stay	
commences on date of order itself	S 15 N 16
1	Lim. 177

(i) Absolute stay rendering decree-halder incapable of taking out any execution of the decree is contem.

(ii) Execution ennsigned to record room—No order granting stay or giving time made.-Whether amounts to

(iii) Order for stay against nne jndgment debtor alone— Whether operates as stay against other judgment-

(iv) Order granting timn to judgment-debter to pay-

S 15 N 9

S 15 N 10

S 15 N 9

S 15 N 10

Exclusion of time-Stay of proceedings-(Contd.) (i) Execution

plated by S. 15

stay of executinn

dobtors

Whother amounts to stay order	S 15 N 10
(v) Order staying execution sale pending disposal of ques-	
tions raised in pending execution petition—Whether	S 15 N 9
etay of execution proceedings within S. 15	B 19 W 9
(vi) Order that decree builder should wait and not proceed	
against properties of judgment debtor - Whether	
operates as stay of execution against curety for judg-	S 15 N 9
(vii) Stay in one particular mode leaving it open to decree-	-
holder to execute in any nther mode - Whether	
amounts to stay of execution within S. 15	S 15 N 9
(viii) Stay of execution of part of the decree or as against	
particular property - Whether eaves limitation for	S 15 N 9
execution of decree as a whole	5 10 11
(k) Final decree in mortgage suit set aside in appeal against	
eome defendants—Case predored to be retried—Court strik-	
ing iff execution application against ather defendants until liability of former defendants was finally settled—Order, if	
nperates as stay of execution	B 15 N 13
(i) Injunction granted by first Court—Suit dismissed in first	
appeal for misjoinder—Case remanded for disposal on merits	
on second appeal—Order of remand is not tantamount to	S 15 N 17
issue of injunction (m) Injunction granted "pending final decision of the suit"—	S 19 H 17
(m) Injunction granted "pending final decision of the suit — Effect of	S 15 N 17
(n) Injunction granted until decision of suit—Decision, if means	
final decision in the litigation by final Court of Appeal or	
Revision	S 15 N 17
(c) Injunction restraining decree-holder from executing decree	S 15 N 9
for principal—Whether debars him from realizing interest	5 10 1.0
(p) Insolvency Court actually passing order amounting to injunc-	S 15 N 8
tion or stay—S. 15, if applies	S 15 N 8
(q) Insolvency, if operates as stay or injunction	D 10 -
(r) Insolvency proceedings, pendency of Refusal of leave to	
creditor to file suit or application—Whether amounts to order granting injunction or stay within S. 15	S 15 N 8
(s) Institution of collateral suit or proceeding, if operates as	
stay-Illustrations	S 15 N 11
(t) Institution of collateral suit or proceeding in respect of	
decree or its subject-matter-Whether operates as stay of	S 15 N 11
execution of decroe within S. 15	D 10 1.
_	
-	

xclusion of time-Stay of proceedings-(Contd.)

- (u) Only period during which person is actually interdicted by injunction or order will be excluded
- (v) Order allowing execution on condition of security being furnished—Furnishing of security found impossible—Order operates as stay of execution
 - (w) Order allowing execution only na condition—Order, if operates as etay of execution
 - (x) Order of attachment prohibiting execution by anybody or accompanied by stay order—S 15, if applies ...
- (y) Period of pendency of appeal from decree—Whether can be excluded in computing limitation for application for execution of decree
- (z) Preferring of appeal, if amounts to order granting injunction
- or stay (z¹) Principle of S. 15
- (2¹) Revival of pending application—S. 15, if affects right to
- (22) Several interrupted periods of interdiction—Party cannot exclude time during which no etay or injunction is in force:
- (z*) Stay by agreement of parties—S 15 does not apply (z*) Stay by injunction or order
 - (i) Acceptance of a decree by Court as security for costs
 —Whether amounts to order staying execution of such
 - (ii) Order of Court for taxation of solicitoria costs against
 - (iii) Order of Court must clearly operate as injunction or stay of execution
 - (iv) Order staying delivery of possession to court auction purchaser of property purchased by him—Whether smounts to injunction preventing institution of suit for mesne profits against person in wrongful posses, son of the property.
 - (v) Parties consenting that stay order or injunction should be granted—Court passing order on such consect granting injunction or stay—Order, if covered Ly S. 15
 - (vi) Period during which injunction or order is in force to be excluded
 - (vii) S. 15 does not refer to disability to sue ar apply expended of Court
 - (26) Stay of execution pending cross-suit by indement detay against decree-holder—Injunction "until the pending has been decided"—Whether means until suit is first decided
 - (z') Stay or injunction in respect of execution granted by Coin a suit or proceeding—Dismissal of suit or processing terminates on such dismissal or continues corporated or appeal in suit
 - (28) Stay ordered on condition of furnishing security—Standard, accepted and given finally unly on later decommences on date of order itself...

Exclusion of time-Stay of proceedings-(Contd.)

(z0) Time during which cuit or application for execution is stayed	4.5
by injunction or order to be excluded Suit for possession by anction purchaser, judgment-debtor being in	£ 1
possession at the date of sale—Time during which proceeding for	
setting aside sale has been prosecuted, whether excluded	A 138 N
-Suit for possession by anction purchaser, judgment-debtor being	
out of possession at the date of sale. Time during which pro-	
ceeding for setting aside sale has been pending, whether excluded:	A 137 N
Suit for possession by purchaser at execution sale	
(a) Exclusion of period of pendency of proceedings to set aside sale	
 Application for possession under O. 21 Rr. 95 and 96 	S 16 N
is not within S. 16	8 10 M
(ii) Period during which auction purchaser has been	
unsuccessfully prosecuting claim based on sale cannot	S 16 N
he excluded	D 201
(iii) Proceeding—Meaning of—Sale impeached by applica- tion—S. 16, if applies	S 16 N
(iv) Suit for actual possession by purchaser who has obtained	-
symbolical possession—Whether within S. 16	S 16 N
(b) Exclusion of time of proceedings to set aside sale — Judg-	
ment-debtor filing suit to set aside sale on application to set	
it aside being dismissed—Entire time taken in such pro-	S 16 N
ceedings, if can be excluded	2 10 h
(c) Period of pendency of proceedings to set aside sale to be	g 1
excluded	_
-Suit on judgment-Time spent in prosecuting application for	A 122 N
execution of decree, whether can be excluded Suit to set aside act of Government officer—Time occupied in pro-	
ceedings before Revenue anthorities, whether excluded	A 14 N
— Suit upon foreign indgment	
(a) Time spent in executing decree in foreign Court, whether can	A 117 N
be excluded	A III W
(b) Time spent in prosecuting application to set aside ex parte	A 117 N
decree, whether can be excluded	11 -11
Exclusive privilege	A 40 N
	A 40 N
—Whether infringed is question of fact	V 40 x
Execution	
becomes executable only on payment of additional court fee -	A 182 N 30
Article 181 applies	A 183 N
And enforcement, distinction between	
Appeal from decree Time runs from date of final decree or order	2; A 182 N 3 S 19 N 63
of Appellate Court A 162 01	S 19 N 63
——Applicability of S. 19 to applications for execution Application by judgment-debtor for entering up part satisfaction of	
decree—Whether amounts to acknowledgment of liability under	S 19 N 4
- Application by indepent-debter for postnonement or stay of sale-	S 19 N 4
Whether amounts to ecknowledgment of hability under decision	
Application by transferee of attached decree Whether manual	A 182 N 74
able	

	2010
Execution—(Contd.)	
- Application filed in time-Subsequent application to continue pro-	
ceeding—Whether subject to period of limitation	C 0 17 00
	S 3 N 32
Application for	
(a) Amendment of	
(1) Court granting time for amendment under O. 21 R. 17	
suh-rule 1. Civil P. C Time so granted can suh-	
sequently be enlarged by Court	A 182 N 86a
(ii) Court overlooking defects of registering application—	
Question whether defects can subsequently be amen-	
ded depends on whether decree is or is not harred on	
date of application	A 182 N 86a
(in) Decree harred on date of amendment - Amendment	A 102 H 00a
1 11	A 182 N 86a
(1) 1 1: 1: 1 - C 1: 1 T ! 14 4 !	
	A 149 N 3
(c) Application by widow of deceased decree holder does not	
enure to henefit of adopted son if widow disputes adoption:	A 182 N 77
(d) Application for delivery of possession by auction-purchaser	
-Whether application for execution within S. 15	S 15 N 5
(e) Application for final decree in mortgage snit.—Whether an	
application for execution	S 15 N 5
(f) Application to obtain succession certificate is not one to exe.	
cute decree	A 182 N 113
(g) Art. 181 applies only in definite circumstances making	
Art. 182 inapplicable	A 182 N 2
(h) but 101	
	A 182 N 2
(i) Art. 181 is residuary Article	A 182 N 2
(1) Art. 182—Construction of	
(i) Court should generally lean to the view that applica.	
tion is not harred	A 182 N 2
(ii) Should be construed liberally and not too technically	A 182 N 2
11.5 £ 2.700 T £ . 1 £ . £	
· when	
• •••	A 182 N 2
ng un-	
and the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of t	A 182 N 2
•	11 102 11 2
ted	A 182 N 2
(1) Art. 182 is not exbaustivo	
	A 182 N 2
(m) Art. 182 is special Article dealing with such applications	A 182 N 2
(n) Art. 182-Language of-Should not be strained in favour of	
judgment-debtor who has not paid his debt	A 182 N 2
(o) Burden of proof —	
 Applicant, whether must prove that previous applica. 	
tion was in accordance with law	A 182 N 144
(ii) Application prima facie within time — Opponent must	
show how it is not within time	A 182 N 144
(iii) Is on applicant	A 182 N 144
(p) Decree passed in favour of estate under Court of Wards-	
	A 182 N 75
	A 182 N 73
43	SSNSFNI
(-) word in mind it can be exerced see	IMICHOL

Execution—Application for—(Contd.)	
(8) Every omission to comply with O. 21, Rr. 11 to 13, whether	
disables Court from proceeding with execution	A 182 N 52
(t) Exclusion of time	11 1021. 02
(i) Application by seenred creditor—Insolvency proceed-	
ings against judgment-debtor— Period of insolvency	
cannot be excluded	A 182 N 5
(ii) Insolvency of decree-bolder—Adjudication annulled—	
Decree-holder cannot claim exclusion of period of	
insolvency	A 182 N 5
(iii) Insolvency of judgment-debtnr—Adjudication annulled	
-Period from date of adjudication to date of annul-	A 182 N 5
ment is excluded	A 102 N 0
(n) Execution stayed by injunction or order—Time during which	8 15
proceedings are suspended to be excluded	
(v) Institution of appeal does not operate as stay of execution within S. 15	S 15 N 15
(w) Limitation	
(1) Parties cannot extend period of limitation	A 182 N 25
(ii) Section 48 Civil P. C., prescribes nnly the maximum	
limit of time and not the time within which applica-	0
tion is to be made	A 182 N 23
(iii) Starting point	A 162
(1v) When special or local law prescribes period different	
from that prescribed by Art. 182	A 182 N 145
(x) Meaning of	A 182 N 10
(y) Period of defendant's absence from British India-Whether	S 13 N 3
can be excluded	D 19 14 p
(z) Plaintiff obtaining decree for possession against defendant-	
Defendant filing snit to have decree set aside an ground	
nf fraud — Suit resisted by plaintiff — Such person, if can	
exclude period of the suit in computing the limitation for an application by him for execution of his decree for posses-	
sion	S 14 N 10
(z¹) Representative suit—Person not on record but who was repre-	
sented by decree-bolder on record can apply to be brought	A 182 N 76
on record and to execute decree	A 10211
(z2) Substitution or addition of new parties—Application not to	S 22 N 3
be deemed to be instituted when new party added	U 22-
(z³) Suspension of time—Immovable property of judgment-debtor	
nnder management of Collector — Limitation is suspended	A 182 N 6
during such period of management	A 182 N 78
(z') Transferee of decree can apply under S 446 Civil P. C. 1882:	
(z^{5}) What is not	
	A 182 N 16
(i) Application by anction purchaser for possession	A 182 N 16
(ii) Application by decree-holder for postponement of exe-	A 182 N 10
(ii) Application by decree-holder for postponement of execution sale (iii) Application for asserts innent of means profits	A 182 N 10 A 182 N 14
(ii) Application by decree-holder for postponement of execution sale (iii) Application for assertainment of means profits (iv) Application for assertainment of means profits (iv) Application for attachment under S. 46, Civil P. C	A 182 N 10 A 182 N 14 A 182 N 10
(ii) Application by decree-holder for postponement of execution sale (iii) Application for ascertainment of mesne profits (iv) Application for attachment under S. 46, Oivil P. C (y) Application for final decree	A 182 N 10 A 182 N 14 A 182 N 10 A 182 N 11 A 182 N 17
(ii) Application by decree-holder for postponement of execution sale (iii) Application for ascertainment of mesne profits (iv) Application for ascertainment ander S. 46, Civil P. C. (v) Application for final decree (a) In partition sait	A 182 N 10 A 182 N 14 A 182 N 10 A 183 N 11 A 182 N 17 A 182 N 13
(ii) Application by decree-holder for postponement of execution sale (iii) Application for ascertainment of mesne profits (iv) Application for ascertainment ander S. 46, Civil P. C. (v) Application for final decree (a) In partition sait	A 182 N 10 A 182 N 14 A 182 N 10 A 183 N 11 A 183 N 17

Execution-Application for-What is not-(Contd.)	
(vi) Application for merely being recognized as transfered	
of decree	
301	A 182 N 15
••	A 182 N 10
•	
•••	A 182 N 10
(z ⁶) Withdrawal of—Effect	A 182 N 86b
	S 2 Cl 10 N 1
decree inr possession barred by limi-	
shes ipso facto applicant's right to	
property	5 28 N 3
-Application for execution of decree of Native State in British	
Indian Court-Whether governed by Indian Limitation Act:	S 11 N 2
Whether an applica.	
The state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the s	S 19
· of decretal amount	
- Whether amounts to acknowledgment of hability under decree:	
- Application for revival—Whether should be made within 3 years	5 10 11 11
of removal of stay	S 15 N 18
of removal of stay	5 10 11 10
between	A 182 N 87
ithout leave of	A 102 A 01
10000 leave of	A 182 N 54
(1) 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
(c) Application against discharged insolvent judgment debtor is	A 182 N 54
not one in accordance with law	A 102 N 04
·	
	A 182 N 72
	1 100 37 54
is not one in accordance with law	A 182 N 54
(f) Application against legal representatives of deceased J. D.	
 For arresting and imprisoning them — Not one in 	
accordance with law	A 182 N 57
(ii) Omission of prayer to bring legal representative on re-	
cord does not make application not one in accordance	
with law	A 182 N 82
(g) Application against person against whom execution could not	
issue is not one in accordance with law	A 183 N 54
(h) Application at time when decree is not capable of execution.	•
whether one in accordance with law	A 182 N 58
(1) Application being drafted on flimsy paper does not make it	
not one in accordance with law	A 162 N 72
	A 102 K 12
(1) Application by agent	
•	
	A 182 N 79
(ii) Application by person nn behalf of decree-holder after	
decree-holder attains majority but without any power	
of attorney—Subsequent ratification by decree holder	
within three years of attaining majority—Application	
rendered valid from date of ratification	A 182 N 79

2822	GENERAL INDEX
Execu	ion—Application in accordance with law—Application by agent—(Contd.)
	(iii) Application presented by person, having no power of attorney from decree-holder but power of attorney filed in Conrt within prescribed period — Application
	is one in accordance with law A 182 N 79
	(iv) Immaterial defects in power of attorney do not render application not one in accordance with law A 182 N 79
	(v) More fact that authorization each as power of attorney is not filed in Cunrt with application does not vitiate the application A 182 N 79
	(k) Application by attaching decree holder to execute attached decree is one in accordance with law A 182 N 74 (1) Application by decree holder of attached decree is one in ac-
	cordance with law A 182 N 74a m) Application by decree holder un record is in accordance with
	law even it his interest in decree has been transferred to another A 182 N 73 (n) Application by legal representative of deceased decree.holder
	without producing succession certificate, whether one in accordance with law A 182 N 59
	(c) Application by mother as guardian of minor decree holder who was really major, is not one in accordance with law A 182 N 60
	(p) Application by stranger claiming to be representative of deceased decree-holder, whether one in accordance with law: A 182 N 77
	(q) Application by transferee of attached decree is one in accordance with law A 182 N 74a
	(r) Application by transferee of decree (i) Application hy transferee claiming to be such is in accordance with law, even though assignment is not
	proved or recognized or found to be invalid in subsequent proceedings. (ii) Assignment refused to be recognised by Court as being
	colourable — Application not one in accordance with law A 182 N 78
	(iii) Fact that transferee is benamidar does not prevent application being one in accordance with law A 182 N 78
	(iv) For being recognised as transferse without any prayer for execution—Whether me in accordance with law: (v) Illustrative cases A 182 N 78
	(vi) Person baving mly right against decree holder to obtain assignment but actually nut getting it — His application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application is not me in accordance with law — Application i
	(vii) Transfer required to he registered under law—Applica- tion by transferce under unregistered transfer (a) Not one in accordance with law (b) Subsequently transfer registered within pres-
	cribed time—Application is nne in accordance with law A 182 N 78
	(viii) Transfer under oral assignment, is not one in accordancee with law A 182 N 78
	(s) Application filed after institution of insolvency proceedings without leave of Insolvency Court is not one in accordance A 182 N 54
	with law

ention—Application in accordance with law—(Contd.)	
(t) Application for arrest of legal representatives under certain	
circumstances is one in accordance with law though subse.	
quently they are not proved	A 182 N 53
(u) Application for execution by arrest of judgment-debtor saves	
time for subsequent application for execution by sale of	1 100 17 01
property of judgment debtor (v) Application for executioo by attachment and sale of some	A 182 N 81a
property of judgment-debtor saves time for subsequent	
application for proceeding against other properties or against	
his person	A 182 N 81a
(w) Application for execution of conditional decree without	
· performing condition—Whether one in accordance with	
law	A 182 N 58a
(x) Application for mere issue of notice to judgment debtor under O. 21, R. 22, Civil P. C., is not one in accordance with law:	4 100 N 110
(y) Application for re-arrest of judgment-debtor who has been	A 102 N 110
released from detention under S. 58, Civil P. C., is not one	
in accordance with law	A 182 N 54
(z) Application for relief in mode not permitted by law is not	
one io accordance with law	A 182 N 57
(z1) Application for removal of next friend of decree-holder and permission to execute is not one in accordance with law	A 182 N 118
(z²) Application for substitution of legal representative is one in	A 102 N 110
accordance with law	A 182 N 126
(23) Application for transfer of decree to Court without jurisdi-	
ction is not one in accordance with law	A 182 N 55b
•	A 182 N 55b
	4 100 31 551
(z) Application forbidden by S. 22. Dekkban Agriculturists' Relief	A 182 N 55b
Act, is not one in accordance with law	A 182 N 52
(z ⁶) Application in respect of person and property outside jurisdic-	
tion of Court but which were stated in application to be	
within jurisdiction—Application dismissed as statement was	
	A 182 N 55a
(z [†]) Application must ask Court to do something which by law	
that Court is competent to do-Competeocy-Meaning of :	A 182 N 52
(z ⁸) Application oot accompanied by certificate as required by S, 29-E, Bombay Gujarat Talukhdar'a Act 1883, whether	
one in accordance with law	A 182 N 59
(z ⁹) Application not accompanied by conciliator's certificate as	A 102 IV 03
required by Dekkhan Agriculturist's Rollef Act 1879, whe-	
ther one in accordance with law	A 182 N 59
(z10) Application praying for relief not granted by decree is not	
one in accordance with law	A 162 N 53
(z11) Application presented by mooktear on behalf of all judgment	
creditors one of whom had signed it and names of others	
were appended by mooktcar, is one in accordance with law:	A 182 N 60
(z12) Application signed only by pleader of party who was	
associated with facts of once to one in accordance with laws	1 189 N 60
acquainted with facts of case, is one io accordance with law:	A 182 N 60
acquainted with facts of orse, is one io accordance with law:	A 192 N 60

2824 GENERAL INDEX Execution-Application in accordance with law-(Contd.) (z13) Application though wrongly describing suit to be small cause A 182 N 61 case, is one in accordance with law (z14) Application to be valid must be made by decree bolder or his A 182 N 73 representative (z16) Application to Court having no prisdiction is not one in A 182 N 52 accordance with law (z¹⁶) Application valid when made cannot be invalidated by subse-A 182 N 52 quent act of default by decree bolder (z17) Application which is barred by limitation is not one in accor-A 182 N 55 dance with law... (z16) Application which is unstamped, whether one in accordance A 182 N 56 with law ... (z19) Application without payment of necessary court-fees, whether A 182 N 56 one in accordance with law A 182 N 72 (z21) . latter Court to execute decree passed by former Court-Question whether such application is in accordance with law made to proper Court must be determined with refer-A 182 N 95 ence to law in force in the Native State (z22) Date of last prior application wrongly given in stating particulars of previous applications but mistake not affecting merits of application-Application not rendered one not in A 182 N 65 accordance with law ... ••• (223) Decree directing sale of property in suit-Application for A 182 N 57 attachment of it is not one in accordance with law (224) Decree granting different reliefs-Application in respect of one or more such reliefs is one in accordance with law so as to save time for subsequent application for any relief gran-... A 182 N 81 ted by decree (z25) Decree granting relief against different persons-Application in respect of one or more such persons is in accordance with law so as to save time for subsequent application against all ... A 182 N 81a judgment-debtors (z26) Decree in mortgage suit against mortgaged property but no personal decree against mortgagor-Application by decreebolder for attachment and eale of non-mortgaged property A 182 N 53 is not one in accordance with law (z27) Decree only against father providing that loan by father not binding on sons. Application by decree bolder for execu-A 182 N 52 tion by arrest of sona is not one in accordance with law ... (z28) Defective vakalatnama

(1) Agent of party giving vakalatnama not describing himself as agent-Application by vakil is not rendered

. ; by vakil not authorized by

in accordance wi

, vakil on auth

signed by him

one in accord

thereby one not in accordance with law

(ii) Application v.

contain his

(in) Application m latnama w

vakalatnama :

A 182 N 71

A 182 N 71

A 182 N 71

vaka-

law:

not

GENERAL INDEX	2325
Execution-Application in accordance with law-Defective va-	kalatnama—
(1v) Decree-holder who has given vakalatnama dead when application presented by vakil—Application is not one in accordance with law	A 182 N 71
 (v) Immaterial defects in vakalatnama do not render application by vakil not one in accordance with law: (vi) Name of pleader wrongly mentioned—Application by 	A 182 N 71
him is not rendered not one in accordance with law thereby	A 182 N 71
 (z²⁹) Effect of return, amendment and rejection— (i) Application amended under provisions of O. 21, R, 17, sub-rule I is in accordance with law when first pre- 	
sented although the defect when first presented is material (ii) Application returned by Court for not complying with requirements of O. 21, Rr. 11 to 14, Civil P. C.—	A 182 N 86a
Application not in accordance with law though omis- sion immaterial	A 182 N 86a
(b) Question, whether such application is in accor-	A 182 N 86a
dance with law depends on the fact whether the defect was material or formal (iv) Defect for which application returned material —	A 182 N 86a
ly formal—	A 182 N 86a
returned or rejected is accented by Court and action taken	A 182 N 86a
Application is nne in accordance with law (vii) Material defect in application	A 182 N 86a
(a) Amount of decree and costs not shown—Applica- tion not one in accordance with law (b) Amount recovered in previous proceedings not correctly stated—Application not one in accord-	A 182 N 86a
ance with law (c) Decree-holder failing to comply with conditional order of Court—Application not one in accord-	A 182 N 86a
ance with law (d) List of property not filed—Application not one in accordance with law	A 182 N 86a A 182 N 86a
(c) Party not signing and verifying application— Application not one in accordance with law	
(x ³⁰) Failure of decree-holder to get mistake in certificate of non- satisfaction of decree corrected—Still application is in accord- ance with law	A 182 N 52
(z ²¹) Failure to file copy of decree—Effect	A 182 N 68
(z ²¹) Failure to file succession certificate—Still application is in accordance with law	A 182 N 52
(z ³³) Failure to produce encumbrance certificate — Application is still one in accordance with law	A 182 N 69

2520 GENERAL INDEX	
Execution—Application in accordance with law—(Contd., (z³3) Judgment-debtor arrested and released pending insolvency proceedings under Insolvency Act—Application for re-arrest	
is one in accordance with law A 182 N 54 (z ³⁵) Judgment-debtor dead when application is made — Whether	
one in accordance with law A 182 N 85 (2**) Mode of assistance of Court not distinctly specified but it was clear from other circumstances — Application not ren-	
dered one not in accordance with law A 182 N 67 (z ³⁷) Necessary elements A 182 N 52	
(z ³⁸) Omission to conform to any of the requirements of law in regard to particular application, whether renders it no one in accordance with law A 182 N 52	
(z ³⁸) Omission to give date of execution of vakalatnama—Applica- tion by vakil is not rendered thereby one not in accordance with law A 182 N 71	
with law A 182 N (1 (z**) Omission to give description of immovable property to be with law A 182 N 70	
operty to be description	
given in previous application and the latter referred to in eubsequent application—Subsequent application is one in accordance with law A 182 N 70 "z**) Omission to give description of property sought to be attached	
or mode in which assistance of Court is sought — Application not one in accordance with law A 182 N 52	
243) Omission to give inventory of moveable property to be attached is material defect A 182 N 70	
(z*4) Omission to give number of suit or date of decree—Still application is one in accordance with law A 182 N 52 (z*4) Omission togive or error in giving date of decree as required	
by O. 21, R. 11, sub.r. 2 Cl. (c) does not invalidate the application	
required by O. 21, R. 11, sub-r. 2, Cl. (i) application ren- with law A 182 N 65 us applications	
application one not in accordance with law A 182 N 65	
(z**) Omission to mention costs and interest awarded by decree as required by O. 21, R. 11, Cl. (g) and (h), Civil P. C., whother invalidates the application A 182 N 66	
(243) Omission to mention names of persons interested in decree does not make application not in accordance with law A 182 N 61	
(z ⁴⁴) Omission to pray for notice to be sent under O. 21, R. 22, ¹⁸ A 182 N 7 ² (z ⁵⁰) Omission to produce copies ordered to be produced under	
Rules 187, 188, Oudh Civil Rules—Still application is one in accordance with law A 182 N 52	
(z ⁵¹) Omission to specify assessment of land brought to sale is not material defect A 182 N 72	
(z ^t 2) Omission to specify manner in which execution is sought— Application is not one in accordance with law A 182 N 67	

Execution—Application in accordance with law—(Contd.) (z ²) Omission to specify the Court which passed the decree — Effect	A 182 N 72
(2 ⁵⁴) Omission to state number of suit and names of parties as required by O. 21, R. 11, Cls. (a) and (b), Civil P. C. does	
invalidate the application (z ⁵³) Omission to state previous adjustments, whether vitiates the	A 182 N 61
ta y canonica to bear of provious aujustinously wheeless visuality	A 182 N 64
•	A 182 N 63
with law (z ⁵⁸) Partition between father and sons of joint family — Father	A 182 N 60
subsequently obtaining decree against stranger in respect of joint family debt—Application by son for execution is in accordance with law (2 ^{to}) Plaintiff to pay cortain amount into Court within certain	A 182 N 73
date under decree not doing so but applying for execution —Application is still one in accordance with law	A 182 N 72
(z ⁸⁰) Proceeding against wrong person as legal representative — Whether one in accordance with law	A 182 N 82
/m; " " " " " " " " " " " " " " " " " " "	A 182 N 52
. ,	A 182 N 52
.ppli-	A 182 N 82
· · · · · · · · · · · · · · · · · · ·	A 182 N 53 A 182 N 52
stances of each case	A 182 N 52
(z ⁶⁹) What is not—Instances (z ⁷) Whether application should be a bona fide one———————————————————————————————————	A 182 N 52 A 182 N 86
cution—Time runs from date of final order passed on such appli-	A 182 Cl 5
Application made to take step in aid of execution - Time runs	A 182 Cl 5
dy entertain and	
but cannot itself	A 182 N 87
(b) A · · ·	
Court is not one made to proper Conrt (c) Application to Collector or Tahsildar for enforcing decision of	A 182 N 96
Assistant Registrar of Co-operative Societies under Co- operative Societies Act, is not one to proper Court	A 182 N 96
	A 192 N 96

Ensentian Emplication in accompanyon with Jame (Count)	
Execution—Application in accordance with law—(Contd.)	
(z ³⁴) Judgment-debtor arrested and released pending insolvency	
proceedings under Insolvency Act—Application for re-arrest	A 182 N 54
(z ³⁵) Judgment-debtor dead when application is made — Whether	
one in accordance with law	A 182 N 85
(z35) Mode of assistance of Court not distinctly specified but it	
was clear from other circumstances — Application not ren-	
dered one not in accordance with law	A 182 N 67
(z ³⁷) Necessary elements	A 182 N 52
(z3s) Omission to conform to any of the requirements of law in	
regard to particular application, whether renders it not one	
in accordance with law	A 182 N 52
(z ³⁹) Omission to give date of execution of vakalatnama—Applica-	
tion by vakil is not rendered thereby one not in accordance	A 182 N 71
with law	
(z40) Omission to give description of immovable property to be	
attached-Application is not one in accordance with law	V 197 N 10
(z41) Omission to give description of immovable property to be	
attached in subsequent application but such description given in previous application and the latter referred to in	
eubsequent application — Subsequent application is one in	
accordance with law	A 182 N 70
'z43) Omission to give description of property sought to be attached	
or mode in which assistance of Court is sought - Applica-	1 407 3T 50
tion not one in accordance with law	A 182 N 52
z43) Omission to give inventory of moveable property to be	A 182 N 70
attached is material defect	
(z44) Omission to give number of suit or date of decree—Still	A 182 N 52
application is one in accordance with law (z ⁴⁵) Omission to give or error in giving date of decree as required	
by O. 21, R. 11, sub-r. 2 Cl. (c) does not invalidate the	
application	A 181 N 62
(z46) Omission to give particulars of previous applications as	
required by O. 21, R. 11, sub-r, 2, Cl. (f)	
. igs application rea-	A 182 N 65
nce with law	A 102 -
evious applications se will not render	
annication one not in accordance with law	A 182 N 65
te will not render application one not in accordance with law (z ⁴⁷) C	
12 / 6	27 66
•	A 182 N 66
(z43) Omission to mention names of persons interested in decree	A 182 N 61
does not make application not in accordance with law	
(z40) Omission to pray for notice to be cent nuder O. 21, R. 22, is	A 182 N 72
not material defect (z ⁵⁰) Omission to produce copies ordered to be produced under	
Rules 187, 188, Oudh Civil Rules—Still application is one	N 59
in accordance with law	A 182 N 52
(z ⁵¹) Omission to specify assessment of land brought to sale is not	A 182 N 72
material defect	
(z ^{b2}) Omission to specify manner in which execution is sought— Application is not one in accordance with law	A 182 N 67
and the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of t	

GENERALI INDEA	2829
Execution-Application to proper Court-Effect of change, etc	(Contd.)
(ii) Decree passed in respect of property - Subsequently	
area transferred to jurisdiction of another Court	,
(a) Application to latter Court is not one made to)
proper Court	. A 182 N 91
(b) Still application to original Court is one made	
	. A 182 N 91
(q) Execution beyond local prisaletion	
 Application by decree-holder to issue notice to judg- ment-debtor is not one to improper Court though 	
udgment-debtor was residing outside Court's prisdic-	
tion at that time	A 182 N 88
(ii) Judgment debtor residing outside local limits of juris-	. A 102 H 00
diction-Application to Court passing decree is one	
made to proper Court	A 182 N 88
(iii) Property outside local limits of jurisdiction—Applica-	•
tion to Court which passed decree is one made to	
proper Court	. A 182 N 88
(r) Proper Court	
(i) Appellate Court is oot proper Court	A 182 N 105
fit has been accumulation and attach in might also men	
	1 100 11 00
4000	A 182 N 87
(iii) Court is not a proper Court unless it has jurisdiction to execute the decree or order	A 182 N 87
(iv) Court passing decree ordering it to be sent to another	
Court, but decree not actually sent—Court which	
passed decree continues to be proper Court	A 182 N 89
(y) Decisions bearing on interpretation of expression	
"Court whose duty it is to execute decree" in O. 21,	
R. 2, Civil P C, should be referred to for determin-	
iog what is proper Court	A 182 N 87
(vi) Definition of	A 182 N 87
(vii) Definition of, 10 Expl. II, Art 182, refers to Court	
whose duty it is to execute decree or order if applica-	
tion in accordance with law is prosented to it	A 192 N 87
(s) Remitting money to Soperiotendent of Jail for subsistence allowance for detention of judgment debtor in jail is appli-	
	A 182 N 101
(t) Suit against A-Attachment before judgment-Attachment	103 11 101
removed on B standing surety-Suit then transferred to	
another Court and decreed by it-Application against	
surety to latter Court is not one made to proper Court	A 192 N 98
(u) Transfer of decree to another Court for execution	
(1) Application by decree-holder to original Court to give	
him second certificate of transfer, the first being still	
subsisting and operative, is not one made to proper	
Court (ii) Application for execution or to take step.io.aid made	A 192 N 89
to transferee Court any time before certificate under	
S. 41, Civil P. C., is sent by it or execution proceedings	
are withdrawn or transferred from it, is one made to	
proper Court	A 192 N 90

Execution—Application to proper Court—(Contd.)	
(e) Application to conciliator under Dekkhan. Agriculturists Relief Act, 1879, is not one made to proper Court (f) Application to Court to which appeal against decree has been	A 182 N 98
preferred is not one made to proper Court	A 182 N 93
(g) Application to Insolvency Court—Mere fact that presiding	
officer of Insolvency Court and Court entitled to execute decree is one and same person, does not make two Courts	
same so as to make application to Insolvency Court one made	A 182 N 97
to proper Court	A 182 N 91
vincial Insolvency Act of 1920 for leave to execute decree	
	A 182 N 97
ot one to	A 182 N 113
(1) Court in Native State	
 (i) Application to Court in Native State for transmission of papers to British Indian Court to enable latter 	
Court to execute decree passed by former Court -	27 05
Whether an application to proper Court	A 182 N 95
 (ii) British Indian Court decree transferred to State Court —Application to Court in State to send back decree to 	** 401
British Indian Court is application to proper Court :	A 182 N 101
(iii) Decree passed by Court in Native State transferred to Court in British India — Proceedings before Court in	
Native State are proceedings before proper Court	A 182 N 95
(k) Court passing decree ceasing to exist — Application to Court which if suit had been instituted at the time of application	
would have jurisdiction to try the suit, is one made to proper	A 182 N 93
(1) Decree for sale on mortgage passed in favour of A—B, bolder	A 10211
of money decree against same judgment debtor attaching	
mortgaged property—Money decree transferred to Collector	
for execution—Application by A to Collector praying the property should be sold subject to his lien, is not one made	- 00 N 06
to proper Court	A 182 N 96
(m) Decree passed by Additional Munsiff—Application to Principal Munsiff of same place is one made to proper Court	A $182 N 98$
(n) Decree passed by Court established temporarily for one year	
 After expiry of term Court continued for further period Application to such Court after one year from its establishment 	
lishment is one made to proper Court	A 182 N 94
(c) Decree passed by Court V transferred for execution to Court P	
 Latter Court attached property of judgment debtor within its jurisdiction — Before Court P sent certificate under 	
S. 41. Civil P. C., to Court V. application made to Court V	
for sale of property — Application not one made to proper Court	A 183 N 87
(p) Effect of change in territorial or pecuniary jurisdiction of	
Court passing decree (i) Decree passed by Court for certain amount—Officer of	
Court succeeded by snother having lesser pecuniary	
inrisdiction than decretal amount — Application to successor is one made to proper Court	A 182 N 91
Adoption to one made to broker court in	

GENERAL INDEX	2831
Execution — Decree against several persons — Joint decree — Age execution, etc.—(Contd.)	pplication for
him-Still application saves limitation against	
other judgment-debtor	A 182 N 138
(b) I —Still judg-	I
J-446-	A 182 N 138
	A 182 N 138
(d) Saves limitation against legal representatives of other judgment-debtors	A 182 N 138
 (e) Saves limitation against other judgment-debtors only where application is one in accordance with 	
law and made to proper Court	A 182 N 188
(ii) Deer	
on	
mer members	A 182 N 188
(iii) F	W 107 M 199
•	
judgment-debtors	1 100 37 100
(iv) Mere fact that limitation is suspended against one	A 182 N 138
joint judgment debtor for his being adjudicated insol.	
vent does not suspend limitation in respect of other	
point judgment debtors	A 182 N 188
(v) Only application for execution or to take step in sid	
against joint judgment debtor saves limitation against	4 100 N 100
(vi) Suit for sale on mortgage—One of properties previously	A 182 N 138
sold for arrears of revenue—Decree passed for reals.	
zation of amount by sale of other properties and out	
of certain amount in hands of one of defendants as	
surplus proceeds of revenue sale—Application for execution against properties saves limitation for	
	A 182 N 138
- Decree amended Time runs from the date of amendment	A 182 Cl 4
- Decree amount paid to decree-holder out of sale proceeds and	
claim satisfied—Sale set aside—Refund by decree-holder—Decree.	
holder, if entitled to fresh period of limitation in respect of fresh	S 9 N 11
- Decree bearing date different from that of judgment by mistake of	221/17
Court - Application within 3 years of date of decree is within	
time	A 182 N 25
- Decree becoming inexecutable by reason of subsequent events	
Limitation—Starting point	A 182 N 31
not obliged to execute decree for costs until appeal is over	A 182 N 46
Decree for injunction-Limitation-Starting point	A 162 N 29
Decree for partition	21 25
(a) Application for execution by one of the parties to decree does	
not save limitation in favour of any other party	A 182 N 140

Execution—Application to proper Court—Transfer of decree, etc. (ii) Application to original Court to recall decree to itself	-(Contd.)
is one made to proper Court	A 182 N 89
(iv) Application to original Court to transfer it to another	
Court is one made to proper Court	A 182 N 89
(v) Application to transferee Conrt after it has returned	
the decree to original Conrt is not one made to proper	4 700 37 00
Court	A 182 N 90
(vi) Application to transferor Court hefore transferoe	
Court sending certificate of non-satisfaction—Certifi- cate subsequently sent — Application whether made	
to proper Conrt Approximation whether made	A 182 N 89
(vii) Decree ordered to be transferred—Transferee Court is	
competent to receive application for execution though	
it has not received copy of decree	A 182 N 90
(viii) Jurisdiction of transferee Court continues till it sends	
certificate to original Conrt under S. 41, Civil P. C.,	
or till execution proceedings are withdrawn or trans.	A 182 N 90
ferred from it	A 182 N 30
(ix) Transferee Conrt attaching property within its juris-	
diction but hefore decree was returned with certifi-	
cate of non-satisfaction to original Court, application put in original Court for sale of the property—Such	
application, whether made to proper Court	A 182 N 89
(x) Transferee Court is proper Court within Expl. II, Art.	
182	A 182 N 90
- Attachment-Claims and objections-See under Attachment	
Auction-purchaser obtaining possession - Subsequent suit for	
possession by auction purchaser on subsequent cause of action—	A 137 N 2
Limitation	W 101 2.
-Auction purchaser realizing amount of decree for money-Execu-	
tion sale set aside—Suit by decree-holder — Suit for money realized by auction-purchaser under decree—Limitation	A 62 N 31
—Certification—See Payment—Decree deht—Certification.	
— Certified copy of decree or order registered—Limitation is 6 years:	A 182
—Continuation of application—See Execution — Revival of applica-	
tion.	
- Creditor recovering money by levylog execution against debtor-	S 20 N 11
Whether amounts to payment within S. 20	5 20 11
——Death of decree-holder leaving minor son—Execution application	
on hehalf of minor dismissed—Minor, if entitled to extension on	S 6 N 14
ground of minority	
(a) Decree passed against several persons as legal representatives	
of deceased persoo — Application for execution against one	182 N 135
saves limitation against others	102-
(b) Decree passed severally — Application for execution against	
one of judgment-dehtors saves limitation only against blind	183 N 13S
(a) Toint downs	
(i) Application for execution against one of joint judg-	
(a) Decree subsequently declared inoperative against	

Execution—Decree or order (Certain date—(Contd.)	directing payment	to be	made	at	a certain	date—
--------------------------------------------------	-------------------	-------	------	----	-----------	-------

ertain date—(Contd.)			
(ii) Date which can become certain	only at a futme t	ıme	
is not certain date	·	A 182 N	135
topicals to meaning	• • • • • • • • • • • • • • • • • • • •		
•			
tain date		A 182 N	135
(iv) Mortgage decree—If sale procee	ds insufficient, bala		
to be recevered from judgment			
from his other properties-Ba			
at a certain date	•••	A 182 N	135
(v) Words refer to date which at th			
order is certain		A 182 N	135
(b) Cl. 7, Art. 182 applies only to first app	diantian for recover		
(b) Ci. 1, Art. 102 applies only to mat app	meation for recover	A 182 N	1 100
1	••	A 102 F	1 100
Automatical Community in CO. 17	•	by A 100 N	1 104
defendant comes within Cl. 7	:	A 182 N	194
		A 182 N	105
•			130
tain date is such decree	On a 6	A 182 N	194
(f) Decree directing payment of money or	nlaintiff attaining		194
majority is such a decree	prainten attaining	A 182 N	105
(g) Decree directing payment of money w	eithin' a cartain na	ioi	100
-Whether such a decreo	tetim a cottain ber	A 182 N	106
(h) Decree regulating rate of interest pa	vabla theraunder m	A 102 1	100
reference to date of payment does no			104
(1) Limitation—Starting point	W COLLIO WILLIAM OL.	A 182 N	
(1) Mortgago decree directing sale of m			100
default of payment of mortgage mon			
3 61 6	ey ou or belore a c	A 182 N	104
(k) Order staying execution of decree tall	dienocal of a cuit		194
tween the same parties does not fall		A 182 N	191
			194
 Order subsequent to decree postponing ment is to be made comes within Cl. 			101
(m) Parties presenting petition stating com		A 182 N	134
of deeretal amount in instalments—			
filed—Order does not come under Cl.		A 183 N	124
(n) Prevision in decree that decree-hold			194
portion of deeretal amount on failure	of indement debter	to	
pay interest does not come within Cl	7	A 182 N	194
(o) Simple meney decree which does not fir	expressly or implica	ale.	194
any date for payment is not such a d	ecrea	A 182 N	125
Decree or order directing payment to be ma	de on different dates		100
Limitation—Starting point		A 182 N	133
Deerce passed when there is only one decre	e-bolder or judeme		200
debter but subsequently more than one per			
1.11 -1.1	3		

2832		GENERA	L INDEX		
Execution-De	cree for partit	ion—(Con	td.)		
agair pert inter of ag	nst defendant e y set apart and r se of such min ge—Joint appli	ntitling the other enal t share nn catinn for e	m to have to ling them the younge execution of	aynur of plaintiff their share in pro tn have partition r nf them coming f former part doe on by one plaintiff	n g s
to ex (c) Decre	secute latter po e while awar	rt ding differ	nt sharers	their respective	. A 182 N 140
for a	execution by no v saves limitati	ne of the p on in favou	arties in re r nf all	spect of such pro	A 182 N 140
Decree in f	avour nf severa	l persons		n not permitted ut one mniety to	
by o	ne set of decre	hnlders do	es not hene		A 182 N 137
of d		aves limita	tion only in	execution hy one i favour of appli-	
(c) Doore defe	e under which ndant and latt	plaintiff is er is entitl	to recover ed to nbtain	certain sum from n possession from	l l
	does not save			laintiff or defen- other	A 182 N 137
(i)	Application for saves limitati	on in favon	nf all join	of decree holders t decree holders	A 162 N 157
	ioint decree h	nlders saves	hy represe limitatinn	ntative of one of in favour of all ution of what he	
	helieves to he ance with lav	his nwn eh Limitati	are — Appl	ication in accord-	A 182 N 137
	what he conc	der, wheth eives to be	his nwn sha	y for execution of re nf decree	A 182 N 137
is step age	inst all	•••		judgment debtor	A 182 N 138
capable of ——Decree not	execution subs	equently—1	Limitation-	ree hut becoming -Starting point: ig Court cannot	A 189 N 26
grant it Decree not	in a form capab	le of executi	on—Art. 18	2 does not apply:	A 162 N 53 A 182 N 11
r				in British India	A 183 N 8 A 183 N 19
Decree on c	condition to be le of immediate	performed b	y decree ho	lder - Whether	A 182 N 33
Decree on Startin	which court-fee	or stamp d		a certain date	A 162 N 30
(a) Cert:	ain date Date need not	enecify exa	et date by	vear, month and	
	day—It is en decree	ongh if it is	indicated in	any way by the	A 183 N 135

Execution—Decree or order directing payment to be made at a concertain date—(Contd.)	ertain (late —
(11) Date which can become certain only at a future time		
is not cortain date	A 182	N 135
(iii) Instalment decree with default clause providing entire		
amount remaining due to be payable on default of one		
or mere restalments-Amount is not payable at cer-		
	A 182	N 135
(iv) Mortgage decree—If sale proceeds insufficient, balance		
to be recovered from judgment-debtor personally and		
from his other properties—Balance is not to be paid		
at a certain date (v) Words refer to date which at the date of the decree or	Λ 182	N 135
	A 100	** ***
order is certain	A 182	N 135
	A 182	N 133
in default certain properties to be made over to plaintiff by		
defendant comes within Cl. 7	A 182	N 134
tiff annually		
7 applies	A 182	N 135
tain date is such decree	A 182	NT 404
(f) Decree directing payment of money on plaintiff attaining his	202	W 194
	A 182	N 135
(g) Decree directing payment of money 'within' a certain period		200
-Whetber such a decree	A 182	N 135
(h) Decree regulating rate of interest payable thereunder with		
reference to date of payment does not come within Cl. 7		
	A 182	N 183
(i) Mortgage decree directing sale of mortgaged properties in		
default of payment of mortgage money on or before a cer- tain date is not one under Cl. 7		
(k) Order staying execution of decree till disposal of a suit be.	A 182	N 134
	A 182	NT 194
(1) Order subsequent to decree postponing date on which pay.	41 IU2 .	11 194
	A 182	7 194
(m) Parties presenting petition stating compromise as to payment	11 102	17.124
of decretal amount in instalments-Petition directed to be		
filed—Order does not como under Cl. 7	A 183 1	N 134
(n) Provision in decree that decree-holder entitled to realize		
portion of decretal amount on failure of judgment-debtor to		
pay interest does not come within Cl. 7 (o) Simple money decree which does not fix expressly or impliedly	A 182 1	N 134
any date for payment is not such a decree ——Decree or order directing payment to be made an different dates—	A 182 1	N 135
Limitation—Starting point	A 182 1	T 122
- Decree passed when there is only one decree-holder ar judgment.	102 1	. 100
debtor but subsequently more than one person becoming entitled		
to or liable under decree		

(a) Amendment of Cl. 5, Art. 182, whether retrospective

Execution—Decree passed when there is only one decree-holder, etc.—(Contd.)

(1) 1 11 · · · · · · · · · · · · · · · ·
(c) Decree-holder dying — Application for execution hy one of
all A 182 N 142 inst one of his local
representatives saves limitation against all A 182 N 142 (f) Sole decree-holder transferring part of decree to another—
Application for execution by transferee saves limitation for application by transferor
Decree partly executable at once and partly not.—Limitation
-Decree partly in favour of plaintiff and partly in favour of defendant—Plaintiff applying for exception of portion in his favour—Whether acknowledges hability in favour of defendant S 19 N 18
 Decree partly joint and partly several against several defendants (a) Decree against several persons but not joint against all in regard to any of reliefs but joint against some of them in
regard to one of reliefs — Still it is decree passed "jointly T, Art. 182 A 182 N 141 ins jointly and
rately—Appli-
oation against all judgment debtors for execution in respect of joint relief saves time for application for separate relief: A 182 N 141 (c) Whether joint or several decree for purposes of second para, of Eval. I. Art. 182
David Lifting One 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
behalf of another
by decree passed in cuit — Time rune from date of decree in such such A 182 Cl 6 — — — — — — — — — — — — — — — — — —
with decree—Cause, if in the nature of defect of jurisdiction within S. 14 N. 21
-Decree-holder prosecuting in good faith and with due diligence execution of decree—Discovery that his remedy was by suit and not by execution—Institution of snit—Period to be excluded S14 N 29 -Delivery of possession—Order as to, in proceedings for—See
under Civil P. C., O 21, Rr. 98, 99, 100 and 103. Effect of bar of limitation—Application and filed within time prescribed by Art. 182—Decree or order is rendered inoperative and unenforceable thereafter
Ex parts decree — Application to set aside dismissed — Appeal therefrom also dismissed — Limitation for execution of ex parts decree, from what date runs
-Execution proceedings in another enit — Whether within the
Final decree—Decree, in appeal from preliminary decree filed before passing of final decree, passed after final decree—Limitation A 182 N 34
Fresh starting point A 182 N 51a

... A 183 N 51a

Execution-Fresh starting point-(Contd.)

ntion—Fresh starting point—(Contd.)	
(b) Amendment of decree	
(1) Amendment after decree is barred by limitation.—Whe-	
ther gives fresh starting point	A 182 N 50
(11) Amendment made by Court without jurisdiction—No	
fresh starting point from date of amendment	A 182 N 50
(iii) Amendment to give fresh start, whether should be	
such that without it decree is incapable of execution:	A 182 N 50
(iv) "Date of amendment"—Meaning of	A 182 N 50
(v) Decree as framed meapable of execution - Decree	
amended so as to become capable of execution-Limi-	1 100 37 50
tation runs from date of amendment	A 182 N 50
(vi) Execution petition filed beyond time—Decree amended	
subsequently-Amendment will not save application	1 100 17 70
already barred	A 182 N 50
(vii) Furnishes fresh starting point	Λ 182 N 50
(vin) "Where a decree has been amended" - Amendment,	
whether includes that of verbal or clemeal errors and	
those which do not concern execution of decree	A 182 N 50
(ix) Whether can be considered as review of judgment	A 182 N 50
(c) Appeal	A 182 N 33
(i) Appeal against order in execution proceedings does not	
give fresh start	Λ 182 N 34
(ii) Appeal against portion of decree, if saves limitation for	
execution of whole decreo	A 182 N 35
(m) Appeal dismissed on representation of pleader that he	
is unable to support it. Time runs from date of dis-	1 200 37 40
missal of appeal	A 182 N 40 A 182 N 88
	A 182 N 33
•	A 102 11 00
	A 182 N 34
(vii) Appeal need not be nno by which whole decree is	
	A 182 N 35
•	
•	
or Art. 102 appues	A 182 N 40
(1x) Appeal rejected before admission-Cl. 2, Art. 182 will	1 100 17 00
not apply (x) Appeal simply dismissed as being incompetent—Cl. 2	A 182 N 38
of Art. 182 applies	A 182 N 40
(xi) Appellate Court erroneously treating appeal as compe-	102 14 40
tent and passing decree-Limitation runs from appel-	
	A 182 N 37
late decree	
	A 182 N 41
runs from appellata decree	A 182 N 46
(xiv) Assignee of decree is entitled to fresh start even though	W 107 W 40
he is not brought on record of appeal	A 182 N 47
,	

Execution-Decree	passed when	there is only one	decree-holder,	etc (Contd.)

	A 182 N 143
ation by one of	1 100 N 140
	A 182 N 142 A 182 N 142
	A 183 N 142
one of his legal	A 182 N 142
representatives saves limitation against all (f) Sole decree-bolder transferring part of decree to another—	W 102 H 112
Application for execution by transferree saves limitation for	
application by transferor	A 182 N 143
	A 100 1
Starting point	A 182 N 28
	22 202 2
Decree partly in favour of plaintiff and partly in favour of defen- dant—Plaintiff applying for execution of portion in his favour—	
Whether acknowledges liability in favour of defendant	S 19 N 18
Decree partly joint and partly several against several defendants	
(a) Decree against several persons but not joint against all in	
regard to any of reliefs but joint against some of them in	
regard to one of reliefs - Still it is decree passed "jointly	17 1/1
against more persons than one" within Expl. I, Art. 182	A 182 N 141
(b) Relief granted by decree against several persons loudly and	
ather wallet annuted against one of them consentely-Appli-	•
respect	A 182 N 141
/-\	
of Expl. I, Art. 182	A 182 N 141
Decree-holder-One joint decree-holder, if can give discharge on	
bobalf of another	S 7 N 15
Decree-holder directed to refund amount recovered by execution	
by decree passed in suit - Time runs from date of decree in such	
suit ·	A 182 Cl 6
Decree bolder joining in execution petition relief not in conformity	
with decree-Cause, if in the nature of defect of jurisdiction	S 14 N 24
within S. 14	511
Decree-holder prosecuting in good faith and with due diligence	
execution of decree—Discovery that his remedy was by suit and not by execution—Institution of suit—Period to be excluded	S 14 N 29
—Delivery of possession—Order as to, in proceedings for—See	
under Civil P. C., O. 21, Rr. 98, 99, 100 and 103.	
- Effect of bar of limitation-Application not filed within time	
prescribed by Art. 182—Decree or order is rendered inoperative	A 182 N 146
and unenforceable thereafter	K 10-
	•
therefrom also dismissed - Limitation for execution of ex parte	A 182 N 31
decree, from what date runs	
Execution proceedings in another suit - Whether within the	S 14 N 12
meaning of another civil proceeding in S. 14	
	A 182 N 34
	A 182 N 51a

7.1	
-Whe-	
	A 182 N 50
(11) Amendment made by Court without jurisdiction No	1 100 N FO
fresh starting point from date of amendment (iii) Amendment to give fresh start, whether should be	A 182 N 50
such that without it decree is incapable of execution:	A 182 N 50
(iv) "Date of amendment"—Meaning of	A 182 N 50
(v) Decree as framed incapable of execution - Decree	
amended so as to become capable of execution-Limi-	
tation runs from date of amendment	A 182 N 50
(vi) Execution petition filed beyond time—Decree amended	
subsequently—Amendment will not save application	A 182 N 50
already barred	A 182 N 50
(vii) Furnishes fresh starting point (viii) "Where a decree has been amonded" — Amendment,	A 102 N 00
whether includes that of verbal or clerical errors and	
those which do not concern execution of decree	A 182 N 50
(1x) Whether can be considered as review of judgment	A 182 N 50
(c) Appeal	A 182 N 33
(1) Appeal against order in execution proceedings does not	22 21
give fresh start	A 182 N 34
(11) Appeal against portion of decree, if saves limitation for	
oxecution of whole decree (iii) Appeal dismissed on representation of pleader that he	A 182 N 35
is unable to support it—Time runs from date of dis-	•
missal of appeal	A 182 N 40
<i>n</i> · · · · · · · · · · · · · · · · · · ·	A 182 N 38
	A 182 N 33
the of referring such decree or order	A 182 N 34
(vii) Appeal need not be one by which whole decree is	
41 11 19	A 182 N 35
of Art. 182 applies	A 182 N 40
(ix) Appeal rejected before admission-Cl. 2, Art. 182 will	21 102 14 40
not apply	A 182 N 38
(x) Appeal simply dismissed as being incompetent—Cl. 2	
of Art. 182 applies (xi) Appellate Court erroneously treating appeal as compe.	A 182 N 40
tent and passing decree—Limitation runs from appel.	
late decreo	A 182 N 37
(vii) Appellate Court holding appeal to bare about but	11 102 11 01
improving to mere doesne some Pecree appealed	
•••	A 182 N 41
Sourt's decree annual decree passed	
runs from appellate decree	A 182 N 46
(xiv) Assignee of decree is entitled to fresh start even though	19 202 11 40
. he is not brought on record of appeal	A 182 N 47

2000	
Execution—Fresh starting point—Appeal—(Contd.) (xv) Decree against principal debtor and surety—Principal debtor alone appealing—Surety not made party—	
Time is saved even against snrety (xvi) Decree obtained only for a portion of claim—Unsuccessful appeal against portion disallowed—Time even as	A 182 N 35
regards portion allowed runs from the date of appellate decree (xvii) Decree passed against several defendants—One of them	A 182 N 35
only appealing—Limitation against all defendants runs from date of appellate decree	A 182 N 35
(xvifi) Decree-holder diod pending appeal by judgment-debtor —Wrong person brought on record as legal represen- tative and consent decree passed—Time for execution by true legal representative runs from date of appel-	
late decree (xix) Dismissal for default does not give fresh start	A 182 N 41 A 182 N 42
(xx) Irregular or incompotent appeal can save limitation under Cl. 2, Art. 182	A 182 N 37
(xxi) Limitation runs from date of final decree or order of Appellate Court	A 182 N 46
(xxii) Order of Appollate Court declaring an appeal to have	A 182 N 41
(xxiii) C disposing of an appeal	A 182 N 41
(xxiv) Person against whom execution is sought need not be party to appeal for applicability of Cl. 2, Art. 182	A 182 N 35
(xxv) Petition under S. 70 (1) (b), Punjab Courts Act, is not	A 182 N 33
appeal before it is admitted (xxvi) Question of limitation should not be made to depend on other question whether appeal by one of defendants or as regards part of decree imperils decree passed	
against other defendante or other portion of decree (xxvi) Review of decree allowed — Appeal against such order	A 182 N 35
-Limitation for execution of decree runs from date of final order	A 182 N 34
(xxviii) Revision application admitted as appoal—Order on such application gives a fresh start	A 182 N 46
(xxix) Suit against B and C decreed against B but dismissed against C—Appeal against dismissal without implead.	
ing B—Time against B runs from date of appellate decree	A 182 N 35 A 182 N 45
e has been an applica-	
(i) Essentials of	A 182 N 51a A 182 N 51a
(ii) No application made to any Court but simply payment to decree bolder out of Court—Clause does not apply: (iv) Suit to set said a decree bolder out of the contract decree holder in	
(iv) Suit to set asido advorso ordor against decree-holder in a claim case—Clause does not apply	A 182 N 5la
(o) Application by decroe-holder asking Court to do something which would have the effect of removing obstacle by judgment-debtor—Decree-holder gats fresh starting point	

coution—Fresh starting point—(Contd.) (f) Application by transferce of decree—Court recognizing assign-	
ment and allowing assignee to execute gives fresh starting	A 182 N 78
(g) Application by transferce of decree under nurgistered transfer and decree-holder contly saves time for later petition by	
transferee who has obtained second registered assignment. (h) Application for execution containing prayer for substitution of legal representative of judgment-debtor is sufficient to give fresh starting point even if it contains error in matter	A 182 N 78
	A 182 N 126
does not give fresh starting point (1) Application in which batta memo is filed must be in accord-	A 182 N 116
ance with law to lender batta memo an application giving fresh studing point (k) Batta memo filed in application for removal of next friend of decree-holder and permission to execute, does not give fresh	A 182 N 118
starting point	A 182 N 118
(A 182 N 124
	A 182 N 131a
starting point (n) Execution application withdrawn without leave, dismissed —	A 182 N 86b
(a) Filing of affidavit of proof of service of notice under O. 21.	A 182 N 86b
R. 22, Civil P. C., whether gives fresh starting point (p) Final decree or order	A 182 N 116
(a) Order of Appellate Court declaring appeal to	A 182 N 40
(A 182 N 41 A 182 N 42
(iv) Order returning appeal for presentation to proper	A 182 N 40
Court is not	A 182 N 43
 Application returned for amendment and not re-pre- sented—Whether must be considered to be pending 	
(11) Decree-holder applying for execution asking for issue of notice to judgment debtor — Order made issuing	A 182 N 127
final order (ii) Final order need not be in accordance with law (iv) Final order on application appealed against — Order of Appellate Court is the final order (v) Meaning of	
(v) Meaning of	182 N 129 182 N 129

2000	GE	EKAH IMPEA		
	sh starting point—I			
(vii)	Order returning applic	ration for amend	ment—Whether	
	final order	•••		. A 182 N 129
(viii)	Order transferring dec			
	(a) Date of final ord			
		ded over to decre		
		Court directed	office to prepare	
	certificate	•••	••• ••	. A 182 N 130
	(b) Is final order	•••	•••	A 182 N 130
(ix)	"Order," whether me	st be passed on	merits	A 182 N 129
(x)	"Order," whether no	ed be indicial of	determination of	1 400 M 100
- 4	matter involved in a	pplication		A 182 N 129
(xi)	Petition dismissed a	ter recording p	art payment -	
	Decree holder grant			
	final order is date of	dismissal and no	ot that at end of	A 182 N 129
(-::·\	two months			
(xn)	Petition returned for a			A 182 N 129
()	rejected—Order of re	election is musi c	raer	1 102 11
(XIII)	Time runs from date	of final order of	application for	A 182 N 129
(xiv)	•	•	h lav	, 21 202 2
(XIV)	• •		ad or	,
	such application	• •	eu or	A 182 N 131
(r) Mere	opposition by decree	holder to appli		
	t-dehtor does not give		int	A 182 N 117
(s) Revie		record protecting Ivo		•
	Decree reviewed at in	nstance of some	of defendants-	
	Limitation runs fro			
	against defendants w			V 183 V 45
(ii)	71 C	_		A 182 N 48
(iii)	Restoration of suit	or appeal dism	issed—Whether	
	review of judgment		•••	W Ton W
(17)	Review granted-Ord	or granting it app	pealed against—	+ +00 N 48
	Time runs from date	of decision in ap	peal	A 182 N 48
(v)	Review in part—Time	runs from date o	f revised decree:	1 182 N 48
(vi)	Review of judgment in	Art. 182, Cl. 3-	-Meaning	A 182 N 48
(t)	• •			11 100
(4)		;	· cution sale	
	under O. 21, R. 92	Civil P C wil		
	starting point	OITH 1. O., 1111	a mor Bitto and	A 182 N 103
(ii)	Application for partic	ular relief order	ed-Subsequent	
	application for same	relief does not giv	e fresh starting	103
	point			A 182 N 103
(iii)	Application to Court i	or a purpose for	which no appli-	4 102 N 103
	cation is necessary ca	nnot furnish fres	h starting point:	W 102 1. 1-
(u) When			261012 02 10 1440	
step	in aid time runs from	the date of final	order on such	A 162 N 51a
appl Instalment	ication	•••		
	gecres cation for recovery of s	ask instalment		
(a) tribiti	CTRION IN LCONFOLD OF C	ace matamient	from	
(i)	Fact that application	is made after th	irco vears mou	
(i)	Fact that application date on which carlie	is made after the instalments fol	Il due does not	× 196

Execution—Instalment decree—Application for recovery of each (Contd.)	instalment
 (ii) Limitation—Starting point (b) Decretal amount directed to ho paid in contain instalments at certain dates—Application for enforcement of payment— 	A 182 N 136
Limitation	A 182 N 136
(c) Default clause providing decree-holder to become entitled to possession on failure of payment of one or more instalments	
,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	
	A 182 N 136 A 182 N 136
within three years of application though application is made more than three years of carliest default	A 182 N 136
(4)	
•	
final order on previous one barred even with	
regard to instalments falling due within three	
years of application (b) Subsequent application made within three years	A 182 N 136
of final order on prior one is within time under	
Cl. 5, Art. 182	A 182 N 136
(c) Subsequent application must be treated as one in	
respect of whole decree and not of instalments:	A 182 N 136
(d) Whether time runs from earliest default	A 182 N 136
(ii) Application for enforcement of certain instalments which fell due within three years of application	
mado after three years from earliest default - Whe-	
ther barred if application for onforcing default clauso	
	A 182 N 136
(iii) Application for onforcement of payment of each instal-	
ment_Limitation_Startiog point	A 182 N 136
	A 182 N 136
- Judgment-debtor and surety	
(a) Application against one Whether serves limitation against	
the other	A 182 N 139
(b) Decree passed jointly against both	
(1) Application against either of them saves limitation	
against both	A 182 N 139
surety only if amount is not realized from principal	
	A 182 N 139
(c) Sters taken against surety to enforce surety bond which do	
not fall under application for execution will not save limi-	
tation against judgment-debtor (d) Surety after passing of decree guaranteeing payment of decre-	A 182 N 139
tal amount—Execution application against surety—Art. 181	
	A 162 N 139

Execution—(Contd)	
Knowledge of proceedings up to time of sale withheld from judg-	
ment-debtor by fraudulent concealment of proceedings by decree-	_
holder—Judgment-debtor can invoke aid of S. 18 S 18 N 1	U
Mortgage decree	
(a) Combined decree against person and property—Limitation for enforcing personally A 182 N 2	7
for enforcing personally A 182 N 2 (h) Decree not drawn up in form specified by O. 34, R. 7, C. P. C.	•
-Execution of Limitation A 182 N 1	3
Of decree-Application for-Limitation A 181 N	
-Of decrees or orders-Meaning of A 182 N 1	
Of mortgage decree-Attachment, if necessary A 11 N 1	
Particular ground relied on as reviving limitation — Ground, if	
should be specified in application S 3 N 31 F N 1	2
Pendency of judgment-debtor's application to enter satisfaction of	
decree—Whether suspends decree-holder's cause of action for	
applying for execution S 9 N 1	Ĺ
-Preliminary and final decree-Time runs from date of final decree	
and not from date of preliminary decree A 182 N 2	,
Relief claimed in application for execution of decree—Whether	,
different from fetier in appreciation for Internation of many description	į
Itelien of Jackmont - Inne I and Item decision passed on 19110	•
Revival of application	
(a) Application for (i) Execution arrested by some obstacle for which decree-	
date when obstacle is removed A 182 N 143	i
(ii) Limitation	
(a) Art. 181 and not Art. 182 applies A 182 N 143 A 182 N 143	
· (h) C ,hat of	
(11)	
A 162 N 143	
(c) Court disposing of matter against decree holder for no act or	
default of bis—Order cannot be considered to have finally	
(d) Essentials (i) Subsequent application must be for same relief and	
(i) Subsequent application must be for same relief and against same person A 162 N 143	
(i) Snbsequent application must be of same nature as previous one A 182 N 143	
(e) Execution application must be deemed to be pending till final order indicially disposing it of is passed A 182 N 143	
(f) Execution application ordered to be simply filed — Fresh application is one for revival A 182 N 143	
(g) Execution application pending — Subsequent application is	
deemed to be one merely for continuation of original pro- ceedings A 183 N 143	
(h) Execution application pending before Court without being	
dismissed-No fresh application is necessary to revive the	
A 182 N 143	
dismissed—No fresh application is necessary to revive the first A 182 N 143	

Execut

tion—Revival of application—(Contd.)		
(1) Execution proceeding suspended by no act nr default of		
decree-bolder-Decree-bolder has right to ask Court to re-		
	A 182	N 143
(j) Final judicial order terminating proceedings passed on appli- cation		
(i) Application cannot be revived	A 182	N 140
 (ii) Subsequent application is regarded as fresh application and not one for revival or continuation of original pro- 		
	A 182	N 148
(k) Form of		
 (i) Application in form for execution can be considered to be one for revival or continuation of earlier pro- 		
	A 182	
(11) It can be orally revived	A 182	N 14;
(1) Order disposing execution proceeding finally, made behind		
back of decree-holder without giving him opportunity of being heard		
// 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	A 182	N 143
	A 182	N 148
(m) Order disposing of matter against docree-holder		
(i) Order made at his request-Proceeding cannot be		
	A 182	N 143
(ii) Order made on ground of default of decree-holder in		
carrying on proceedings - Proceeding cannot be		
revivod	A 182	N 143
(iii) Order made whore he could not take further proceeding owing to circumstances beyond his control		
(a) Fiesh application regarded as one for revival and		
	A 182	N 143
	A 182 I	
(n) Order finally disposing of proceedings subsequently turning		
out to be untenable, inoperative or ineffective-Proceedings		
	A 182 I	N 143
(o) Order striking off proceeding		
(i) Effect depends on intention of Court in making order		
and construction of nrder	A 182	N 143
(ii) If it amounts to final order, proceedings cannot be	1 100 1	
(iii) Order made for administrativn nr statistical purposes is	A 182 1	7 143
	A 182 1	£ 143
(iv) Order striking off proceeding for the present Order is		
not one finally disposing of proceeding	A 182 1	N 143
(p) Petition dismissed though attachment continued - Subse-		
quent application is regarded as fresh application and not one		
	A 182 2	143
(q) Principle of treating application as continuation of former one applies only where decree-holder has not been remiss	A 162 N	143
(r) Property sold and decree satisfied. Sale subsequently set		
aside at instance of judgment-debtor - Decree holder can		
apply for revival of earlier proceeding	A 162 N	143

Execution—Revival of application—(Contd.)	٠.
(s) Question whether or not execution proceeding has been	n
finally disposed of so as to be incapable of being revived o	r
continued	
(i) Form of order passed on application not sufficient t	o . A 182 N 143
	A 182 N 143
(ii) Is one of fact (iii) Is one of substance and not of form	A 182 N 143
(t) Revival and continuation of ambigation.—Not much differ	
CHCO	A 182 N 143
Act, S. 158 (b)-Suit to	
	A 120 N 31
ect of Suit by minor or	A 44 N 4
attaining majority—Limitation Sale of property of religious or charitable endowment—Sale in	
execution of decree against manager—Snit against auction-pur-	
sharen Cuit for any and a constant of and amount property	,
-Limitation-Starting point A	131. VRC u o
-Sale proceedings, when can be set aside on ground of fraud-	S 18 N 10
Instances	
- Sale set aside by judgment debtor Suit by auction purchaser for	A 62 N 7
refund of purchase money—Limitation	
——Stay of — Effect : See Excidence of time ——Step in aid	
decree—Whether application to take step in aid	A 162 N 105
(b) Application against wrong person as legal representative-	A 182 N 82
Whether step in aid (c) Application by decree holder asking Court to reject objections	
of judgment debtor to execution is one to take step in aid	A 183 N 117
(a) Application by decree bolder for appointment of feetive is	A 182 N 112
one to take step in aid	W 102 11 21
(e) Application by decree-holder for copy of decree is not necessarily one to take step in aid	A 183 N 119
(f) Application by decree-bolder for copy of list of properties	
	A 183 N 119
take sten-in-aid	W 107 11
(g) Application by decree-holder for payment out of money lying in Court as result of satisfaction or realization in execution	
of decree Whether one to take step in sid	M Ion at a
/Ll A 1 . 1	
•	A 182 N 119
	A 183 N 112
(1) Application by decree holder to receive batta for resisting	
judgment debtor's application objecting execution is one to	A 182 N 117
take step in aid (k) Application by decree holder to send for certain records for	**
resisting judgment debtor's application objecting execution	00 N 117
is one to take sten-in-aid	A 182 N 117
fil a 17 fr and state of the woodet.	7
	A 182 N 117

2843

xecu	ation—Step-in-aid—(Contd.)	
	(m) Application by decree-bolder-purchaser to receive from him poundage fee in respect of property purchased and an appli- cation to be allowed to set off purchase money ugainst decree	
	are not applications to take step-in-aid (n) Application by executor of decree-holder without probate is	A 182 N 128
•	step-in-aid (o) Application by holder of decree A for rateable distribution of	A 182 N 81
	(p) Application by holder of redemption decree to send notice to	A 182 N 125
	judgment-debtor asking him to withdraw money deposited in Court by former is one to take step-in-aid	A 182 N 128
1	(q) Application by transferee of decree under S. 232 Civil P. C.	
	though unsuccessful is a step-in-aid (r) Application containing prayers for execution of decree and also for matters amounting to steps-in-aid — Application	A 182 N 78
	though failing to be in accordance with law as one for execu- tion is still one to take step-in-aid	A 182 N 100
	(s) Application defective in material particulars as execution application contains prayers that the applicant, legal repre- sentative of decree holder, should be permitted to proceed with	
	· with	A 182 N 109
	 Application can only be taken where either execution application is pending or decree is capable of being 	
;	, kept alive	A 182 N 110 A 182 N 110
	(m) Application for attackment ""	A 182 N 129
	(v) Application for continuation of execution sale to secure	A 182 N 128
	proper attendance of bidders is one to take step in	A 182 N 128
•	(vi) Application for correction of decree by additional in- terest omitted to be mentioned in decree is one to	
:	(vii) Application for ojectment of tenant against whom	A 162 N 126
Ĺ	decree for arrears of rent is passed, is not one to take step-in-aid	A 182 N 128
	(viii) Application for execution also containing prayer for substitution of legal representative of deceased judg. mont debtor — Application though not in accordance	
	with law being one for execution is one to take n step.	
	in-aid (ix) Application for reconstruction of decree destroyed by-	A 182 N 126
		A 182 N 123
٠	ings is one to take step-in-aid	A 182 N 128
	(xi) Application for stay of proceeding pending appeal is not one to take step-in aid	A 182 N 128

Execution—Step-in-aid—Application for—(Contd.)
(xii) Application for substituted service of notice of execu-
tion is one to takn step-in-aid A 182 N 128
(xiii) Application for substitution of legal representative of
decree-holder or indgment-debtor is one to take a
step-in-aid A 182 N 126
(xiv) Application for summoning necessary witness in execu-
tion proceedings is one to take step-in-aid A 182 N 128
(xv) 'Application' in clause 5, of Art. 182 does not include a suit' A 182 N 104
(vei) Application need not be in writing unless required by
Codo—It may be oral A 182 N 103
(xvii) Application need not necessarily be made during execu-
tion proceeding under S. 47, Civil P. C., but may be made in any proceeding affecting execution A 182 N 117
(xvni) Application should be liberally construed as including any document containing a request A 182 N 103
() 35 if the bar a seek that a seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the seek the see
(xx) Mere certification by decree-bolder of payment made to bim is not application A 182 N 124
(vw) Must be needs to Court where duty it is to execute the
A 102 N 01
(xxii) No prescribed form A 182 N 103
(xxiii) Order made by Court of such a nature that it could
12 1 2 4 1 2 A 183 N 103
(xxiv) Plaint, if can be treated as an application A 182 N 10*
not be made unless the application is necessary A 102 11
(xxvi) Question whether act or proceeding amounts to applica-
tion depends on facts and circumstances of case A 183 N 103
(xxvii) Should be one in accordance with law and to the pro- per Court A 182 N 101
cumstances raise such presumpting A 182 N
(u) Application for delivery of possession by decree-holder auction purchaser—Whother step in aid A 182 N 123
(v) Application for execution containing also prayor to issue
prayer for notice is concerned is nue to take step.in.aid A 103 X
(w) Application for execution of attached decree is one to take step-in-aid of execution of original decree A 182 N 120
(x) Application for final decree for sale or for foreclosure under Givil P. C. (1998) not one to take etc. in aid A 182 N 111
Civil P. C. (1908) not onn in take etep-in-aid A 102
(y) Application for final decree in partition suit is not one to take step-in-aid A 182 N 111
(z) Application for further transfer of decree made to trans- feror Court—Whether step in aid A 182 N 121
to take sten-in-aid
(z2) Application for issue of notice to indepent-debtor under
O. 21, R. 66 or to have a dath fixed for settlement of terms 4 183 N 1163
of proclamation is step-in-aid

Execution-Step-in-aid-(Contd.)

α	ition—Step-in-aid—(Conta.)				
	notion				
			182	N 1	18
	et of	•••	-02		.20
		A 10	00.3		
			82 N		
		Α.	182	N 1	.22
	(z ⁶) Application for leave to bid compled with request to set off				
	purchase money against decretal amount is step-in-aid	A :	182	N 1	22
	(z7) Application for mero issue of notice to judgment-debtor				
	under O. 21, R. 22, Civil P. G. is not one to take step-in-				
		۸.	100	NT 4	10
		Α.	182	7/ 1	υu
	(z ⁸) Application for order absolute for foreclosure under S. 89,				
	T. P. Act, is one to take step-in-aid	A 1	82 1	N 1	11
	(z ⁹) Application for order absolute for sale under S. 87, T.P. Act, is				
	one to take step-in-aid	A 1	182	N 1	11
	(z10) Application for postponement of execution proceedings-				
	Title at the same in any Title at the same	Δ 1	182	N 1	15
	Whether step in aid—Illustrative cases	a r	.04	., 1	10
	, to recall decree from				
		A I	182	Νı	21
	(ii) Application to transferee Court to send certificate of				
	result of execution and to return decree to Court				
		A 1	182	N 1	91
	(z12) Application for review of an order striking off execution			•••	
		A 1	. 00	1 7 1	00
	(al3) Ambientian for toward at 1	u 1	182	17 T	UG
	(z ¹³) Application for transfer of decree				
	(1) Application against indement debtor who is dead is not				
	step in aid	A 1	182]	N 1	21
	(ii) Application for transfer to a Court which has no juris.				
	diction to execute the decree is not sten in aid	A 1	82 1	N 1	21
	71°-5 TL • 4 P 4 • • •		182		
	(z16 . in Court-Whe-				
		Λ 1	182	NT 1	07
	(z15 nother execution		102	., 1	U
	ter in respect of				
	/ 18\ 1 . 11 . 11 . 11	A 1	182	N 1	28
	(z16) Application merely to execute decree cannot be considered as				
	one to take step in aid	A 1	l82 I	N 1	09
	(z^{i7}, \dots, z^{i7})		82 1		
	(218				-
	in-aid	A 1	82 1	e 1	08
	(z10) Application to Court of Native State to transfer decree of		02 1	, I	20
		4 1	00.3		
	(a20) Application to Great to making courts to step-in-and	21 1	.82 1	2 T	IJΙ
	(z20) Application to Court to receive railway charges for taking				
	judgment debtor to civil prison and subsistence money for				
	his maintenance is one to take step-in-aid	Α1	82 1	N 1	18
	(z21) Application to obtain succession certificate is not one to take				
	step-in-aid	A 1	182	51	13
	(z22) Application to stay sale in execution but to continuo attach-		-	-	
		A 1	183	C 10	90
					-0
	(z ²³) Application to withdraw pending execution petition with				
	leave to institute another at some future time is not one to		^-		
	tako step-in-aid	Λ1	82 1	N 1	23

Exec	ation—Step-in-aid—(Contd.)	
	$(z^{21} - 1)$	
)
	the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the s	A 182 N 11
	(z25) Batta memorandum containing statement "batta for arrest"	
	and accompanied by necessary fees is an application to take step-in-aid	A 182 N 11
	(z ²⁶) Batta memerandum mentioning that it is paid for notice	A 102 11 11
	under S. 248. Civil P. C. (1882) is sten-in-aid	A 182 N II
	(z27) Certification under O. 21, R. 2-Whether step-in-aid	, A 182 N 12
	(z28) Costs incurred in course of execution proceedings-Applica-	
	tion for recovery of anch costs not one to take step-in-aid of	A 182 N 10
	execution of decree itself (z ²⁹) Court bound to confirm sale under O. 21, R. 92, Civil P. C.,	A 102 H 10
	where no application is made under Rr. 89, 90, 91 of same	
	Order—Application for confirmation of sale is not one to	
	take step-in-aid	A 182 N 11
	(z ³⁰) Court in Nativo State	
	(i) Application to Court in British India to send to Court	
	in Nativo State necessary papers to enable latter Court to execute decree passed by former Court.—Whether	
	application to take step in aid	A 182 N 93
	(ii) Decree passed by Court in British India transferred to	
	Court in Native State - Application to latter Court	
	for return of decree to Court in British India is one	A 182 N 93
	to take atep-in-aid (z*1) Decree transferred to another Court for execution—Applica-	20-
	tion by assignee to that Court for sending back the records	
	to parent Court "for further conducting suit"-Application	A 182 N 78
	amounts to step-in-aid	A 182 N 93
	(z ³²) Essentials	
	(z ³³) Execution against principal debtor saves limitation against surety	A 182 N 81s
	(z31) Execution of decree itself barred.—There can be no step-in-	
	aid	A 162 N 100
	(z35) Final decree already passed — Application by decree holder	
	under mistake for final decree, whether one to take step-in-	A 183 N 111
	(z35) Judgmont-debtor applying for recording satisfaction of decree	
	-Decree-holder contesting and filing list of witnesses-	
	Application by decree-holder requesting to examine witnesses	A 182 N 117
	is one to take step-in-aid	A 100
	(z ³⁷) Judgment-debtor preferring appeal against order passed against him in execution proceeding—Fact that decree-holder resists	N 117
	· ·	A 182 N 117
	(z33) · · · h pending	A 182 N 123
	Lion of attached decree	A 182 N 120
	(z40) Mero filing of affidavit by decree-holder that there are no	
	incumbrances in property to be sold is not one to take step-	A 183 N 123
	in-aid	119
	step-in-aid	A 182 N 118

GERERAH INDEX	2011
Execution—Step-in-aid—(Contd)	
(z ¹²) Mere swearing of affidavit proving service of notice to judg ment-debtor unaccompanied by any application is not step	
in-aid	. A 182 N 116a
(z ⁴³) Opposition by decree-holder to judgment-debtor's application under O. 21 R. 2, Civil P. C. is not one to take step-in-aid	A 189 N 117
(z44) Payment of process fee and filing of notice of sale is equiva-	
lent to application to take step-in-aid	. A 182 N 118
fare	
step	
in-aid	A 182 N 118a
(n) Mere payment without application.—Whether step-in	
	A 182 N 118a
(z40) Resistance by decree holder to execution of another man's	
decree is not step in aid of execution of his own decree	A 182 N 117
(z4) Re-submission of returned application after complying with	1
order of Court for amendment is not an application for	
	. A 182 N 106a
(z43) Statement by decree holder objecting to judgment debtor's	4 100 17 117
application to record satisfaction is not step-in-aid	. A 182 N 117
(z49) Step asked for, whether should be in aid of execution by a	
	. A 182 N 107
 (z¹⁰) "Step in aid of execution," whether refers to execution of decree under Civil P. C. or any other law in force in British India; 	A 182 N 107
(z ⁵¹) Step must be one to be taken by the Court and an application	
should be made to the Court for that purpose A 1	82 N 102, 103
(z12) Step must be with reference to decree sought to be executed,	
	A 182 N 108
	A 182 N 100
(z ⁶⁴) Vakalatnama executed authorsing vakil to execute decree	
-No further authority is required for applying to take	
step-in-aid	
(z ⁵⁵) What is not	
(1) Acts of party himself	A 182 N 102
(a) Act of accompanying process peon to identify the	
udement.debtor	A 182 N 102
(b) Filing certain papers in Court to be kept in the	
record	A 182 N 102
(c) Getting necessary encumbrance certificate or	
	A 182 N 102
(ii) Certification of payment made by judgment debtor to	
the decree-holder out of Court	A 182 N 102
(iii) Decree-holder asking for time to take out substituted	
service of notice ordered to be taken to judgment.	
debtor	A 182 N 103
	A 182 N 100
—Suit by auction-purchaser for recovery of purchase money on	7 185 N 100
ground of fraud of decree-holder—Limitation	
-Suit by purchaser for possession of purchased property-Limita.	A 95 N 9
tion-lixclusion of time of pendency of proceedings to set aside	
sale	S 16
	2 10

2848

Execution—Step in-aid—(Contd.) ——Suspension of execution arising by decree bolder's omission or default—Subsequent application, if can be regarded as continua-	-
tion of previous one Suspension of execution through no act or default of decree-holder Decree-holder, if can ask Court, to revive and carry through	S 15 N 18
suspended execution proceedings	S 15 N 18
execution	A 182 N 9
Execution proceedings	
——Death of defendant during—Addition of legal representative as party—Application for—Limitation	A 177 N 3
Fraud in course of Suit for relief in respect of such fraud Maintainability	A 95 N 9
Execution purchaser	
Who is, within Art. 180	A 180 N 3
——Application for delivery of possession—See under: Execution Sale —Application for delivery of possession	
Execution sale	
Application for delivery of possession	
(a) Application within time closed for statistical purposes—	A 180 N 6
(h) —Subsequent application	A 180 N 6
(c) Application within time struck off—Subsequent application	A 180 N 6
heyond limitation, if maintainable	A 100 N 1:
(d) By purchaser—Limitation—Starting point: A 138 N 2; A 180,	A 180 N 4
(e) By transferce of anction-purchaser—Limitation	A 180 N 3
(f) Period of pendency of snit by judgment dehtor for setting	
aside sale, whether excluded	A 180 N 4 A 180 N 5
(g) Whether time excluded by virtue of S. 14, Limitation Act	A 180 N 5
(h) Whether time excluded under S. 15, Limitation Act	A 180 N 5
(i) Whether time extended by virtue of S. 5. Limitation Act Application to set aside on ground of judgment debtor having no	
saleable interest—Limitation	A 166 N 8
Confirmation of-Application for setting aside sale within time	
hut after confirmation, if barred	A 166 N 2
-Decree modified, reversed or set aside after sale-Effect of, on	A 12 N 6
auction-purchaser	A 12
-Frand committed by decree holder in proceedings taken to bring	
judgment-dehtor's property to sale—No fresh set of fraud proved at date of sale—Antecedent fraud, if entitles party to benefit of	
S. 18	S 18 N S
-Fraud-Sale-Decree-holder not guilty of fraud but auction pur-	
chaser so guilty-Application to set asido cale-Period, it can be	S 18 N 14
extended as against either	
Immovable property sold	> 0
(a) Delivery of possession, resistance to (i) Against anction-purchaser—Remedy of	A 167 N 2 A 167 N 2
(ii) Against decree-holder—Remedy of	V 101 11 -

Execution sale - Immovable property sold - Delivery of pos	
Resistance tn-(Contd.)	ssession
(111) Complaint of—Application for	
(a) Application converted into suit — Limitation	
-Court, whether cao dimiss such suit on	
ground that application is barred by time	A 167 N 3
	7: A 167 N 2
(c) Time, whether extended on ground of minority	A 167 N 4
	A 101 N 4
(d) Where applicant has been twice resisted in deli-	4 407 47 0
very of possession	A 167 N 2
(e) Where execution case is transferred to another	
Court	A 167 N 5
(b) Delivery of-Suit for delivery of possession by decroe-holder	
purchaser—Maintainability	A 180 N 2
(c) Purchaser decroe holder—Delivery of possession — Remedies	A 180 N 2
(d) Purchaser stranger—Delivery of possession—Remedies	A 180 N 2
T 7 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	A 166 N 8
	A 166 N 8
	A 10 N 9
<u> </u>	
of-Suit for-Limitation	A 120 N 2
-Property sold belonging to person other than judgment-debtor	
but who is party to suit — Application by such person for relief	
in respect of such sale—Limitation	A 166 N 8
—Sale of interest of undivided member of joint Hindu family—	W 100 M 9
	4 100 37 0
Nature of right acquired by purchaser	A 180 N 2
Nature of right acquired by purchaser ——Sale of interest of undivided member of joint Hindu family—Pur-	
Nature of right acquired by purchaser —8ale of interest of undivided member of joint Hindu family—Pur-	A 180 N 2 A 180 N 2
	A 180 N 2
—— Sale of interest of undivided member of joint Hindu family—Pur-	A 180 N 2 A 166 N 18
—— Sale of interest of undivided member of joint Hindu family—Pur-	A 180 N 2
——Sale of interest of undivided member of joint Hindu family—Pur-	A 180 N 2 A 166 N 18
—— Sale of interest of undivided member of joint Hindu family—Pur-	A 180 N 2 A 166 N 18 A 166 N 16
——Sale of interest of undivided member of joint Hindu family—Pur-	A 180 N 2 A 166 N 18
——Sale of interest of undivided member of joint Hindu family—Pur. to record (ii) Applicant, when can claim benefit of S. 18, Limitation	A 180 N 2 A 166 N 18 A 166 N 16 A 166 N 6
— Sale of interest of undivided member of joint Hindu family—Pur- to record (ii) Applicant, when can claim benefit of S. 18, Limitation Act	A 180 N 2 A 166 N 18 A 166 N 16
—— Sale of interest of undivided member of joint Hindu family—Pur. to record (ii) Applicant, when can claim benefit of S. 18, Limitation Act (iii) Judgment debtor, whother barred under Art. 166 to set	A 180 N 2 A 166 N 18 A 166 N 16 A 166 N 6
——Sale of interest of undivided member of joint Hindu family—Pur- to record (ii) Applicant, when can claim benefit of S. 18, Limitation Act (iii) Judgment. debtor, whother barred under Art. 106 to set up defence in suit for possession by purchaser that sale	A 180 N 2 A 166 N 18 A 166 N 16 A 166 N 6 A 166 N 18
— Sale of interest of undivided member of joint Hindu family—Pur. (ii) Applicant, when can claim benefit of S. 18, Limitation Act (iii) Judgment-debtor, whother barred under Art. 166 to set up defence in suit for poss-som by purchaser that sale is voidable by him (J. D.)	A 180 N 2 A 166 N 18 A 166 N 6 A 166 N 6 A 166 N 18 A 166 N 18
——Sale of interest of undivided member of joint Hindu family—Pur. to record (ii) Applicant, when can claim benefit of S. 18, Limitation Act (iii) Judgment-debtor, whother barred under Art. 166 to set up defence in suit for possession by purchaser that sale is voidable by him (J. D.) (iv) Limitatup—Art. 165 and S. 18, Limitation Act	A 180 N 2 A 166 N 18 A 166 N 16 A 166 N 6 A 166 N 18 A 166 N 19 A 166 N 19
—— Sale of interest of undivided member of joint Hindu family—Pur. (ii) Applicant, when can claim benefit of S. 18, Limitation Act (iii) Judgment-debtor, whother barred under Art. 166 to set up defence in suit for possession by purchaser that sale is voidable by him (J. D.) (iv) Limitation—Art. 166 and S. 18, Limitation Act (y) Limitation—Special and general provisions of	A 180 N 2 A 166 N 18 A 166 N 6 A 166 N 18 A 166 N 19 A 166 N 19 A 166 N 19 A 166 N 19
— Sale of interest of undivided member of joint Hindu family—Pur. to record (ii) Applicant, when can claim benefit of S. 18, Limitation Act (iii) Judgment debtor, whether barred under Art. 166 to set up defence in suit for possession by purchaser that sale is voidable by him (J. D.) (iv) Limitation—Art. 166 and S. 18, Limitation Act (v) Limitation—Special and general provisions of A 166;	A 180 N 2 A 166 N 18 A 166 N 6 A 166 N 6 A 166 N 19 A 166 N 19 A 166 N 18 A 166 N 21
— Sale of interest of undivided member of joint Hindu family—Pur. to record (ii) Applicant, when can claim benefit of S. 18, Limitation Act (iii) Judgment-debtor, whother barred under Art. 166 to set up defence in suit for possessom by purchaser that sale is voidable by him (J. D.) (iv) Limitation—Art. 166 and S. 18, Limitation Act (v) Limitation—Special and general provisions of A 166;	A 180 N 2 A 166 N 18 A 166 N 6 A 166 N 6 A 166 N 18 A 166 N 19 A 166 N 18 A 166 N 11 A 166 N 11 A 166 N 11
— Sale of interest of undivided member of joint Hindu family—Pur. to record (ii) Applicant, when can claim benefit of S. 18, Limitation Act (iii) Judgment debtor, whother barred under Art. 166 to set up defence in sut for possession by purchaser that sale is voidable by him (J. D.) (iv) Limitation—Art. 166 and S. 18, Limitation Act (v) Limitation—Special and general provisions of A 166;	A 180 N 2 A 166 N 18 A 166 N 6 A 166 N 6 A 166 N 19 A 166 N 19 A 166 N 18 A 166 N 21
— Sale of interest of undivided member of joint Hindu family—Pur. to record (ii) Applicant, when can claim benefit of S. 18, Limitation Act (iii) Judgment-debtor, whother barred under Art. 166 to set up defence in suit for poss-som by purchaser that sale is voidable by him (J. D.) (iv) Limitation—Art. 166 and S. 18, Limitation Act (v) Limitation—Special and general provisions of A 166,	A 180 N 2 A 166 N 18 A 166 N 16 A 166 N 6 A 166 N 18 A 166 N 18 A 166 N 18 A 166 N 20 A 166 N 21 A 166 N 21 A 166 N 21 A 166 N 20
—— Sale of interest of undivided member of joint Hindu family—Pur. to record (ii) Applicant, when can claim benefit of S. 18, Limitation Act (iii) Judgment debtor, whother barred under Art. 166 to set up defence in sut for possession by purchaser that sale is voidable by him (I. D.) (iv) Limitation—Art. 166 and S. 18, Limitation Act (v) Limitation—Special and general provisions of A 166; (d) Application for declaration that execution sale is void—Limitation	A 180 N 2 A 166 N 18 A 166 N 6 A 166 N 6 A 166 N 19 A 166 N 18 A 166 N 19 A 166 N 11 A 166 N 11 A 166 N 11 A 166 N 11 A 166 N 11 A 166 N 11 A 166 N 11
— Sale of interest of undivided member of joint Hindu family—Pur. to record (ii) Applicant, when can claim benefit of S. 18, Limitation Act (iii) Judgment debtor, whother barred under Art. 166 to set up defence in suit for possession by purchaser that sale is voidable by him (J. D.) (iv) Limitation—Art. 166 and S. 18, Limitation Act (v) Limitation—Special and general provisions of A 166; (d) Application for declaration that execution sale is void—Limitation— and the contract of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction of the contraction o	A 180 N 2 A 166 N 18 A 166 N 16 A 166 N 6 A 166 N 18 A 166 N 18 A 166 N 19 A 166 N 11 A 166 N 11 A 166 N 11 A 166 N 11 A 166 N 20 A 166 N 20 A 166 N 2
—— Sale of interest of undivided member of joint Hindu family—Pur. to record (ii) Applicant, when can claim benefit of S. 18, Limitation Act (iii) Judgment debtor, whother barred under Art. 166 to set up defence in sut for possession by purchaser that sale is voidable by him (I. D.) (iv) Limitation—Art. 166 and S. 18, Limitation Act (v) Limitation—Special and general provisions of A 166; (d) Application for declaration that execution sale is void— Limitation ::edings—Limitation S. 47—Limitation	A 180 N 2 A 166 N 18 A 166 N 6 A 166 N 6 A 166 N 19 A 166 N 18 A 166 N 19 A 166 N 11 A 166 N 11 A 166 N 11 A 166 N 11 A 166 N 11 A 166 N 11 A 166 N 11
— Sale of interest of undivided member of joint Hindu family—Pur. to record (ii) Applicant, when can claim benefit of S. 18, Limitation Act (iii) Judgment-debtor, whether barred under Art. 166 to set up defence in sut for recession by purchaser that sale is voidable by him (I. D.) (iv) Limitation—Art. 166 and S. 18, Limitation Act (v) Limitation—Special and general provisions of A 166; (d) Application for declaration that execution sale is void— Limitation S. 47—Limitation S. 47—Limitation O. 21, R. 85—Provisions as to	A 180 N 2 A 166 N 18 A 166 N 16 A 166 N 6 A 166 N 18 A 166 N 19 A 166 N 11 A 166 N 11 A 166 N 11 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20
—— Sale of interest of undivided member of joint Hindu family—Pur. to record (ii) Applicant, when can claim benefit of S. 18, Limitation Act (iii) Judgment debtor, whother barred under Art. 166 to set up defence in sut for possession by purchaser that sale is voidable by him (I. D.) (iv) Limitation—Art. 166 and S. 18, Limitation Act (v) Limitation—Special and general provisions of A 166; (d) Application for declaration that execution sale is void— Limitation ::edings—Limitation S. 47—Limitation	A 160 N 2 A 166 N 18 A 166 N 16 A 166 N 16 A 166 N 18 A 166 N 19 A 166 N 19 A 166 N 11 A 166 N 11 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20
— Sale of interest of undivided member of joint Hindu family—Pur. to record (ii) Applicant, when can claim benefit of S. 18, Limitation Act (iii) Judgment-debtor, whether barred under Art. 166 to set up defence in sut for recession by purchaser that sale is voidable by him (I. D.) (iv) Limitation—Art. 166 and S. 18, Limitation Act (v) Limitation—Special and general provisions of A 166; (d) Application for declaration that execution sale is void— Limitation S. 47—Limitation S. 47—Limitation O. 21, R. 85—Provisions as to	A 180 N 2 A 166 N 18 A 166 N 16 A 166 N 6 A 166 N 18 A 166 N 19 A 166 N 11 A 166 N 11 A 166 N 11 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20 A 166 N 20

Y for and

Execution sale-Setting aside-(Contd.)	
(b) Application within time but after confirmation of sale, if	
barred (i) Article 166, whether governs all applications irrespective of	· A 166 N 2
(i) Article 166, whether governs all applications irrespective of	100 37 0
	· A 166 N 21
(k) Extension of time on ground of fraud—Burden of proof as to fraud	A 166 N 18
(1) Fraud antecedent to sale, whether can extend time for such application	A 166 N 18
(m) Fraud, when can extend time for such application	A 166 N 18
(n) Notice to persons affected by application to set aside sale-	
Limitation	A 166 N 12
(o) Order setting aside sale subsequently reversed—Fresh application to set aside sale—Limitation	A 166 N 22
(p) Right to apply to set aside sale accruing subsequent to sale	
-Limitation-Illustrative cases	A 166 N 2
A S M S S T S A M S T B S S S S S S S S S S S S S S S S S	
• • • •	
	S 18 N 14
N	S 18 N 10
against	
	A 126 N 6
	A 166 N 10
(u) Suit for, by judgment-debtor—Where auction purchaser is a bona fide stranger—Limitation	A 12 N 6
Rail (v) Suit treated as proceeding under Owil P. C., S. 47-Limi-	16
tation	A 166 N 14 A 12 N 5
(w) Suit; when maintainable :	A 12 L
(x) Suit, whether lies on ground of frand committed in course of	A 95 N 9
execution:proceedings	A 166 N 18
(z) Time occupied in inhtaining report of sale-officer, whether	
can be excluded	A 166 N 17
(z1) Time, whether extended on ground of Court being closed on	A 166 N 17
last day of limitation	
(z1) Time during which applicant has been prosecuting application	A 166 N 17
to set ablde sale in wrong Conrt, whether can be excluded (23) Time during which defendant is absent from British India,	
whether can be excluded	A 166 N 17 A 166 N 17
(2) Time, whether can be extended under S. 5, Limitation Act	A 166 N 17
(25) Time, whether can he extended under S. C, Limitation Act	A 166 N 15
(z) Under inherent power—Limitation	
(z7) Whether Court has power to extend time for such applica-	A 166 N 17
tion ' . / !	A 180 N 2
Suit for delivery of possessinn—Limitation	
Void execution sale	A 166 N 2 A 166 N 2
***	A 166 N 2
Y 4	W 100 -

	2001
Execution sale—(Contd)	
Voidable execution sale	
(a) In what way can be set aside	A 166 N 2
(b) Setting aside—Application for—Limitation	A 166 N 2
(c) What is—Illustrative cases	A 166 N 2
When complete	A 166 N 21
Executor—See also Legal representative	** 100 11 21
—Acknowledgment of liability by executor—Whether binding on	
estate estate	S 19 N 56
-Acknowledgment or payment by one of several executors-Whe-	p 19 W 96
ther effective against others	S 21 N 15
Application by, for execution - Time taken for obtaining probate	0 -1 1. 10
-Whether to be excluded	S 9 N 6
- Authority to give acknowledgment on behalf of estate is based on	
his position under the law and not the result of any contractual	
arrangement	S 19 N 50
——Debtor, executor under creditor's will	
(a) Limitation, if suspended during continuance of administra.	
tion	S 9 N 5
(b) Suit by legatee against executor for debt-Cause of action,	
when arises	S 9 N 12
- Debtor of testator becoming executor under his will - Executor,	
if trustee for specific purpose in regard to such debt	S 10 N 16
If trustee for specific purpose	S 10 N 16
One joint executor, if can give discharge on behalf of all	S7N 26
Suit against	
(a) Suit by residuary legatee for recovery of shares granted	
under will-Plaintiff, whether is entitled to get accounts for	
period of 12 years before suit	A 123 N 7
	A 120 N 15
(c) Suit for accounts by legates—Limitation	A 123 N 7
(d) Suit for legacy—Limitation	A 123 N 2
(e) Suit for share of residue bequeathed by testator-Limita.	
tion	A 123 N 2
(f) Suit for share of property of intestate—Limitation	A 123 N 2
(g) Suit to recover moneys misappropriated by executor—Limi-	
tation-Starting point	A 120 N 4
(h) Suit under Legal Ropresentatives' Suits Act-Provision of	
	3 to 35 N 1
 Suit where executor by his own act constitutes himself, express trusteo—Suit, whether exempt from har of limita- 	
	A 123 N 8
(i) Suit where executor is also mado express trusteo — Suit,	11 120 11 0
whether exempt from har of limitation	A 123 N 8
(k) Suit, whether exempt from bar of limitation	A 123 N 8
Suit by	
(a) For recovery of moneys due to him from the estate—Limitation	A 120 N 4
tation	A IZU A 4

Executor—Suit by—(Contd.)
(b) For recovery of possession of land belonging to deceased—
Beneficiaries under will substituted for executor after
period of limitation—Suit, if barred by S. 22 S 22 N 5
(c) Under Indian Fatal Accidents Act—Limitation A 21
(d) Under Legal Representatives' Suits Act—Limitation A 20 —Testator bequeathing to executor properties directing him to pay
out of such properties specified legacies and debts—Executor, if
trustee for specific purpose S 10 N 16
Whether can be sued or sue on behalf of estate before obtaining
probato S 17 N 8 Whether express tructes A 123 N 8
I House express exacts
Exemption from limitation
-Fraud-Facts suggesting fraud of defendant-Omission expressly
to stigmatize conduct as fraudulent—Plaintiff, if can rely on S. 18 S 3 N 31 F N 11
-Ground of-Whether should he set forth in plaint in explicit
53 N 31
Grounds-Minority of plaintiff, if should be pleaded: S3 N 31 F N 11
-New and inconsistent ground of, if can be taken to get over
limitation New ground of if can be taken without amendment of plaint: 93 N 31 F N 9
—Plea of
(a) If can be allowed at late stage of proceedings S3 N 31 (b) Must appear in plaint S3 N 31
(a) Not taken in plaint—Effect of S 3 N 31
Ex parte decree-Sec also under Decree - Ex parte decree.
A. Janton by Julyana A. Jakon to and and A. Hantley for
execution of same decreo is not for eame relief S 14 N 19
Application to eet aside-S. 22, if applies
—Setting aside of — Application for—Delay in filing, if can be S 5 N 3 F N 1
excused soo
Extension of time—See also under Delay—Excuse of.
On ground of fraud-Suit for money bad and received-Time, A 62 N 32
whether extended by operation of S. 18
—On ground of minority — Minority, whother extends period of limitation for pre-emption suit A 10 N 6
—Court, whether can extend time if sufficient cause is shown for not
applying in time for substitutiou
Extinguiehment
-Right of local authority, whether extinguished if suit for possession A 146.A N 6
of street or road is barrod under Art. 145-A
Extinguishment of right to property
-Agent of owner collecting rents from tenant-Appropriation of
whether can be extinguished by reason of such assertion and appropriation S29 N 2
— "Any property" in S. 28—Meaning ol S 28 N 3
Application for possession-S. 28 does not apply S 28 N 3
- "At the determination of the period" in S 28-Meaning of

GENERAL INDEX	2853
Extinguishment of right to property—(Contd.)	
Effect of	
(a) Extinguishment of title of rightful owner-Whether gives	
	S 28 N 6
(b) Title acquired by operation of S. 28	D 20 H 0
(1) Person so acquiring it, if can sue for possession of pro-	
	S 28 N 6
perty on being dispossessed of it (11) Suit for declaration of title—Whether can be main.	5 20 N 6
	0.00 11.0
tained by person so acquiring it	S 28 N 6
(c) Title of person extinguished in favour of wrongdoer-Whe-	0.00 11.0
ther revived by that person again getting the possession Extinguishment of right to possession — Whether and whon	S 28 N 6
	G 00 M 6
operates rotrospectively	S 28 N 6
— Full period prescribed for suit for possession must expire	S 28 N 2
-Land attached to office of profit as appurtenant to it-Right to	
office harred—Right to land also will be extinguished	S 28 N 5
Math having no lawful manager during period of prescription-	
Whether affects operation of S 28	S 28 N 4
- Mere fact that owner happens not to be in possession for 12 years	
does not extinguish his right	S 28 N 2
Notani of consists actional to in C. 00	S 28 N 5
	0 20 14 0
—Nature of right extinguished	
(a) Mortgage — Dispossession of mortgagor by stranger who	
remains in adverse possession for 12 years—Only right to	
equity of redemption and not mortgagee's right is extin-	C 00 37 0
guished	5 28 N 6
(b) Order under S. 145, Criminal P. C., declaring one of two	
parties to be entitled to and in oxclusive possession of	
property in dispute—No suit for possession by other party	
filed within time limited by Art. 47—Right, whether to	C 00 M C
exclusive possession or joint possession is extinguished	8 28 N 6
(o) Owner baying absolute right to property—Adverse possessor	
claiming only limited interest. Only such limited interest	C 00 31 0
is extinguished	S 28 N 6
(d) Person prescribed against only a person with limited interest	
-Only that interest will be extinguished	S 28 N 6
(e) Principal right to sno for possession extinguished under	
S. 28-Rights accessory thereto will also be extinguished	S 28 N 6
(f) Right extinguished cannot be anything more than what	
wrongdoer purports to prescribe for	S 28 N 6
(g) Right extinguished cannot be more than what rightful owner	
1-11-41	S 28 N 6
(b) Right to claim possession destroyed—Right to claim damages	5 25 14 0
	0.00 11.0
incidental to it is also destroyed	S 28 N G
(1) Right to possession includes right to joint possession	S 25 N 6
 Right to recover possession from tenant lost by failure to sne 	
for 12 years after termination of lease-Right to recover	
arrears of rent for years within 12 years or for damages	
also lost	S 28 N 6

(k) Right to sue for joint possession destroyed—Right to claim partition and recovery of share cannot be claimed

S 28 N C

S 28 N 6 S 29 N 2 S 28 N 2 S 28 N 2 S 28 N 6 S 28 N 2 S 28 N 2 S 28 N 8 S 23 N 2 S 25 N 3 S 28 N 5 S 23 N 2 S 23 N 2 S 23 N 5 S 23 N 5 S 23 N 5 S 23 N 6 S 23 N 5 S 23 N 5 S 28 N 5 S 23 N 5 S 28 N 5 S 29 N 2

Extinguishment of right to property-(Contd

Extinguishment of right to property—(Contd.)
-One of two reversioners filing snit against nlience from widow
within 12 years of widow's death-Other reversioner impleaded
as party defendant-Written statement by him after 12 years
claiming his share also against alience—His right is not extin-
guished by his failure to sue for his share within 12 years
— Period of limitation
-Person having right to redeem property in nnother's possession
under n mortgage and obtain possession from him-His right
cannot be extinguished until 12 years after redemption
-Person in possession seeking to rely upon his possession as defence
to suit—S. 28 does not apply
Person who could have sucd for possession of property allowing
limitation to expire—His title is destroyed
Person who could not or need not have sned for possession-S. 2S,
if applies
-Plaintiff's property under attachment under S. 146, Criminal P. C.
-His title cannot be extinguished however long attachment
may continue
-Plea of title-Plaintiff need not say that defendant has lost his
title by adverse possession
-Possession of defendant, in law possession of plaintiff-Plaintiff's
right to property, if extinguished by S. 28
——Proceedings to which S. 28 applies
Property-Property must be one recognized by law to fall within S. 23
-Receipt of rent by one of co-mortgagors nlone-Whether amounts
to possession—Right to redeem by other co-mortgagor, if affected
by this Section
-Right of reversioner of Hindn widow to sue nlience for possession
-Right is not extinguished by ahenee continuing in possession
for any period shorter than 12 years after widow's death
-Right to a Buddhist monastery-Whether can be acquired by
operation of S. 28
-Right to an office of proft-Whether can be acquired by operation
of S 98
-Right to birt jajmani-Whether can be acquired by operation of
S. 28
Right to joint possession of property extinguishedRight of survivorship incidental to it will also be lost
-Right to levy assessment on rent-free lands-Whether can be
acquired by operation of S. 28
- Right to maintain a projection over neighbour's land-Whether can
be acquired by the operation of S. 2S
- Right to nankar allowance forming part of a larger estate which
has been divided and enjoyed in severalty for a long time-
Whether can be acquired by operation of S. 23
Right to property
(a) Right to redeem a usufructuary mortgage—Whether property
for the purpose of S. 28
(b) Whether includes right to joint enjoyment as well as right
of survivorship to property Right to redemption and possession of property—Right to sue for
, hossession when united

Extinguishment						1,
	ined to immov	able propert	Y	•••	•••	S 28 N 5
"Suit for pos (a) Meanin						S 28 N 3
(b) Person	bound to set					0 20 11 0
	sion—Failure		set aside—	Whether e	xtin-	0.00 11.0
	es right to prop o property, wi		ehad	•••	•••	S 28 N 3 S 28
	28. if applies			antral Pros	กำกลด	5 20
Tenar	nev Act					S 28 N 3
(e) Section	n 28, if applies	to snits for	possession t	o he broug	ht in	~
Rever	ue Court	•••		•••	•••	S 28 N 3
			-,,	٠	•••	S 28 N 3 S 28 N 3
				/hether w	rithin	5 25 M 5
S. 28		•••	•••	•••	•••	S 28 N 3
	or sale on u	nortgage—W	hether suit	for posse	9881011	0 00 17 0
	n S. 28 enforco maint	tonomeo W	hathar mith	20 2	•••	S 28 N 3 S 28 N 3
	led to be in pe					13 20 11 0
	ntitled to prop					
	aguished by far	llure to sue	for possessio	n helore e	xpiry	~
of term						S 28 N 2
the operation	xolusivo right	ot ushery—	Whether car	he acquir	ed by	S 28 N 5
	usufructuarily	morteneine	nronerty t	o another	_One	20 A O
alone recoi	ving and appr	opriating w	hole rent-	Receipt of	rent	
	onsidered to b	o possession	by him-Ri	ight to rode	em is	
not affected	-	•••	•••	***	•••	8 28 N 3
Extradition Act						
-Appeal unde	r, to High Cou	irt—Limitat	ion	• • •	•••	A 155 N 1
Factor		T				
Suit against,	ior account—	Limitation	•••	•••	•••	A 88
		•••	•••	•••	•••	A 83 N 1
False Imprisons						
(a) Period	in respect of v	which compo	nsation can	he recovere	a-đ	A 19 N 2
(h) Suit fo	r-Limitation	-Starting	oint	***	A 1	9, A 19 N 2
	or—Wrong co		intly hy so	veral perso		1/20.22.0
Falso impris	tation applicah			27-47-		A'19 N 3
between	onment and i	manemus an	use or proc	ess, distin	ction	A 19 N 1
False impris		alicious pros	ecution, dist	inguished		A 19 N 1
-Falso impris					•••	A 19 N 1
-Mouning of	•••	•••	•••	•••	•••	A 19 N 1
(a) False	imprisonment	does not co	ntinue after	the perso	on is	
relea (b) Parror	sed on bail 1 after release o	n haif what	har undar in	***	. ··· .	A) 19 N 1 A 19 N 1
(c) Person	n, after reniand	d to jail by	Court, when	der anger	falso	.()
	sonment		1.		· l- ,	A 19 N 2

False imprisonment—Meaning of					
'(d) Person wrongfully arreste remands bim to costo	ed and tak	en before l	Magistrate	who '	•
whether false imprisonm		inspirment	Winer remi	•••	A 19 N 1
When ends-Remand to custod	ly by Cou	rt or releas	se on bail p	outs	
an end to false imprisonment		•••	***	•••	A 19 N 2 A 19 N 2
	•	**	•••	•••	AIDIL
Fatal Accidents Act					
Proceedings under—Legal disal of—Suit for compensation and					
if available		ecuonts A	CtDALGUS	S 6 1	13 F N 1
-Suit under-Limitation			•••		A 21
Fee					
-Fees of vakil-How recoverable			•••		A 84 N 5
License fee_Suit for license fee			ality in resp	ect	
of platform erected by defende			•••	***	120 N 43
-Suit by vakil-Suit against Pres	sideot of T	aluk Board	_Limitatio	n:	A 84 N 2
- Snit for fee charged for issuing	permission	for use of	municipal la	ınd ,	120 N 43
—Limitation	•	••	•••	*** 13	120 11 20
Female					
Female as trusteeEstate of-	—Suit by	trnstee m	succession	3 ^	141 N 10
Limitation Female bolding estate by inbe	aritanaa n	ndor Hinds	lam_Dec	ree	
against—Whether binding on	reversiona	rv beirs	 	А	141 N 18
- Female in possession by contr.	act—Esta	te of—Suit	for—Snit	by ,	141 N 10
reversioner—Limitation	:				141 1/ 10
Female in possession as legatereversioner—Limitation		e oi—Buit	for—Suit	А	141 N 10
—Female in possession as trespas	sser—Esta	te of—Sui	for—Suit	by	141 N 10
reversioner—Limitation				A	141 N 10
-Female in possession through i	favour—E	state of—P	ossession of	·- A	141 N 10
Suit for—Suit by reversioner— ——Female limited owner	-Limitati	on .	•••	•••	
(a) Adverse possession agains	L-Advers	e possession	, whether h	ar .	141 N 13
against reversionary bair	1B -			A	
(b) Alienation by—Alienation of reversioner		ing on esta	te-Remed	A	141 N 12
(c) Alienation without nece	ssitvAli	enation, wi	ether bindi	ng	15
on reversioner				А	141 N 15
(d) Alienation without neces	ssity—Spit	by revers	ioner for po	os• A	141 N 15
session of property alian (e) Estate of — Division of	ated—Lin	nong rever	sioners — O		•
reversioner getting less t	than his sh	are by mis	take of law	_	
Suit by reversioner for	equal aba	ra against	co-reversion	er A	141 N 17
on ground of mistake—I (f) Female trying to set up f			oversioner f		
(f) Female trying to set up f possession of property of	f femala lin	nited owner	_Limitatio	n: A 1	41 N 153
(a) reversioner, whether bu	rred by a	dverse poss	ession again	A	141 N 14
last male owner (i) Suit by reversioner	•	••	•••		141 N 20
(1) Burden of proof in	anch suit			А	141 1, 2,

Female—Female limited owner—Suit by reversioner—(Contd.)	
/// m · · · · · · · · · · · · · · · · ·	
	A 141 N 22
	A 141 N 21
	A 141 N 19
y (t)	A 141 N 15a
-Hindu female	
(a) Moveable property of-Snit by Hindu whn is entitled to	
possession on death of Hindu female-Limitation-Start.	
ing point	A 141 N 11
(b) No one in possession at death of female—Suit for possession	
-Limitation	A 141 N 12
(c) Suit against alience of female who is dead-Limitation	A 141 N 12
(d) Suit by Hindu who is entitled to possession after death of	
female—Limitation A 14	1; A 141 N 2
(e) Suit by reversioner who is entitled to possession on death of	
female-Suit also involving declaration as to invalidity of	
adoption by Hindu female-Limitation	A 141 N 16
Mahomodan female	
(a) Immovable property of Suit by Mahomedan who is entitled	
to possession on death of Mahomedan femalo-Suit where	
no one is in possession at death of female-Limitation	A 141 N 12
(b) Life estate of Suit by Mahomedan who is entitled to pos-	
	1: A 141 N 2
(c) Moveable property of —Suit by Mahomedan who is entitled	1, 2 131 11 2
to possession on death of Mahomedan femalo—Limitation	
	A 141 N 11
—Starting point	V 141 W 11
- Firm coasing to be going concern-Presumption of agency of one	0.01.37.40
partner to acknowledge or pay on behalf of firm does not apply :	S 21 N 13
-Firm not of the character of a going mercantile concern-One	
partner, if can be presumed to have authority to acknowledge	
	~ ~
and make payments on behalf of firm	S 21 N 13
-Firm to which presumption of agency of one partner to act on	S 21 N 13
—Firm to which presumption of agency of one partner to act on behalf of firm arises—Presumption will hold good only in case of	S 21 N 13
——Firm to which presumption of agency of nne partner to act on behalf of firm arises—Presumption will hold good only in case of acknowledgements or payments made in the course of partnership	
—Firm to which presumption of agency of one partner to act on behalf of firm arises—Presumption will hold good only in ease of acknowledgments or payments made in the course of partnership business	S 21 N 13 S 21 N 13
Firm to which presumption of agency of one partner to act on behalf of firm arises—Presumption will hold good only in case of acknowledgments or payments made in the course of partnership business	
Firm to which presumption of agency of one partner to act on behalf of firm arises—Presumption will hold good only in case of acknowledgments or payments made in the course of partnership business Going mercantile concern—Each partner may be presumed to bave authority to acknowledge and make payment on behalf of	S 21 N 13
Firm to which presumption of agency of one partner to act on behalf of firm arises—Presumption will hold good only in case of acknowledgments or payments made in the course of partnership business	
—Firm to which presumption of agency of one partner to act on behalf of firm arises—Presumption will hold good only in case of acknowledgments or payments made in the course of partnership business —Going mercantale concern—Each partner may be presumed to bave authority to acknowledge and make payment on behalf of firm —One partner authorized to acknowledge or pay on behalf of firm—	S 21 N 13
Firm to whitch presumption of agency of one partner to act on behalf of firm arises—Presumption will hold good only in case of acknowledgments or payments made in the course of partnership business Going mercantile concern—Each partner may be presumed to bave authority to acknowledge and make payment on behalf of firm One partner authorized to acknowledge or pay on behalf of firm Authority may be implied from facts and circumstances of each	S 21 N 13 S 21 N 13
— Firm to which presumption of agency of one partner to act on behalf of firm arises—Presumption will hold good only in ease of acknowledgments or payments made in the course of partnership business — Going mercantile concern—Each partner may be presumed to bave authority to acknowledge and make payment on behalf of firm — One partner authorized to acknowledge or pay on behalf of firm— Authority may be implied from facts and circumstances of each case	S 21 N 13
Firm to whitch presumption of agency of one partner to act on behalf of firm arises—Presumption will hold good only in case of acknowledgments or payments made in the course of partnership business Going mercantile concern—Each partner may be presumed to bave authority to acknowledge and make payment on behalf of firm One partner authorized to acknowledge or pay on behalf of firm Authority may be implied from facts and circumstances of each	S 21 N 13 S 21 N 13
— Firm to which presumption of agency of one partner to act on behalf of firm arises—Presumption will hold good only in case of acknowledgments or payments made in the course of partnership business — Going mercantile concern—Each partner may be presumed to bave authority to acknowledge and make payment on behalf of firm — One partner authorized to acknowledge or pay on behalf of firm—Authority may be implied from facts and circumstances of each case — Partner, authority of, to acknowledge or pay on behalf of firm — — Presumption of accept of one partner to act on behalf of toters	S 21 N 18 S 21 N 13 S 21 N 13
— Firm to which presumption of agency of one partner to act on behalf of firm arises—Presumption will hold good only in case of acknowledgments or payments made in the course of partnership business — Going mercantile concern—Each partner may be presumed to bave authority to acknowledge and make payment on behalf of firm — One partner authorized to acknowledge or pay on behalf of firm—Authority may be implied from facts and circumstances of each case — Partner, authority of, to acknowledge or pay on behalf of firm — — Presumption of accept of one partner to act on behalf of toters	S 21 N 18 S 21 N 13 S 21 N 13
— Firm to which presumption of agency of one partner to act on behalf of firm arises—Fresumption will hold good only in ease of acknowledgments or payments made in the course of partnership business — Going mercantile concern—Each partner may be presumed to bave authority to acknowledge and make payment on behalf of firm — One partner authorized to acknowledge or pay on behalf of firm Authority may be implied from facts and circumstances of each case — Partner, authority of, to acknowledge or pay on behalf of firm	S 21 N 18 S 21 N 13 S 21 N 13
— Firm to which presumption of agency of one partner to act on behalf of firm arises—Fresumption will hold good only in ease of scknowledgments or payments made in the course of partnership business — Going unercantale concern—Each partner may be presumed to have authority to acknowledge and make payment on behalf of firm — One partner authorized to acknowledge or pay on behalf of firm case — Partner, authority of, to acknowledge or pay on behalf of firm — Presumption of agency of one partner to act un behalf of others applicable to going concerns—Whether applies to dissolved part.	S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13
—Firm to which presumption of agency of one partner to act on behalf of firm arises—Presumption will hold good only in case of acknowledgments or payments made in the course of partnership business —Going mercantile concern—Each partner may be presumed to bave authority to acknowledge and make payment on behalf of firm —One partner authorized to acknowledge or pay on behalf of firm—Authority may be implied from facts and circumstances of each case —Partner, authority of, to acknowledge or pay on behalf of firm—Presumption of agency of one partner to act on behalf of others applicable to going concerns—Whether applies to dissolved partnership in regard to creditors of firm —Receiver of assets of firm with power to pay debts due by firm—Whether can circ acknowledgement in resect of debt	S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13
— Firm to which presumption of agency of one partner to act on behalf of firm arrises—Fresumption will hold good only in ease of scknowledgments or payments made in the course of partnership business — Going unercantale concern—Each partner may be presumed to have authority to acknowledge and make payment on behalf of firm — One partner authorized to acknowledge or pay on behalf of firm—Authority may be implied from fasts and circumstances of each case — Partner, authority of, to acknowledge or pay on behalf of firm—Presumption of agency of one partner to act un behalf of them applicable to going concerns—Whether applies to dissolved partnership in regard to creditors of firm—Receiver of assets of firm with power to pay debts due by firm—Whether can give acknowledgment in respect of debt	S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13
—Firm to which presumption of agency of one partner to act on behalf of firm arises—Presumption will hold good only in case of acknowledgments or payments made in the course of partnership business —Going mercantile concern—Each partner may be presumed to bave authority to acknowledge and make payment on behalf of firm —One partner authorized to acknowledge or pay on behalf of firm—Authority may be implied from facts and circumstances of each case —Partner, authority of, to acknowledge or pay on behalf of firm—Presumption of agency of one partner to act on behalf of others applicable to going concerns—Whether applies to dissolved partnership in regard to creditors of firm —Receiver of assets of firm with power to pay debts due by firm—Whether can circ acknowledgement in resect of debt	S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13
— Firm to which presumption of agency of one partner to act on behalf of firm arises—Fresumption will hold good only in ease of scknowledgments or payments made in the course of partnership business — Going uncreantile concern—Each partner may be presumed to have authority to acknowledge and make payment on behalf of firm — One partner authorized to acknowledge or pay on behalf of firm—Authority may be implied from facts and circumstances of each case — Partner, authority of, to acknowledge or pay on behalf of firm—Presumption of agency of one partner to act un behalf of others applicable to going concerns—Whether applies to dissolved partnership in regard to creditors of firm—Receiver of assets of firm with power to pay debts due by firm—Whether can give acknowledgment in respect of debt — Suit against dissolved partnership—Date of institution of suit is date of suit and not of service of summons on individual partner subsequent to suit.	S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13 S 22 N 15
Firm to which presumption of agency of one partner to act on behalf of firm arises—Presumption will hold good only in case of acknowledgments or payments made in the course of partnership business. Going mercantile concern—Each partner may be presumed to bave authority to acknowledge and make payment on behalf of firm One partner authorized to acknowledge or pay on behalf of firm Authority may be implied from facts and circumstances of each case Partner, authority of, to acknowledge or pay no behalf of firm Presumption of agency of one partner to act no behalf of firm Presumption of agency of one partner to act no behalf of others applicable to going concerns—Whether applies to dissolved partnership in regard to creditors of firm Theodory of assets of firm with power to pay debts due by firm—Receiver of assets of firm with power to pay debts due by firm—Suit against dissolved partnership—Date of institution of suit adato of surt and not of service of summons on individual partnership—date of summons on individual partnership.	S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13
— Firm to which presumption of agency of one partner to act on behalf of firm arises—Fresumption will hold good only in ease of scknowledgments or payments made in the course of partnership business — Going uncreantile concern—Each partner may be presumed to have authority to acknowledge and make payment on behalf of firm — One partner authorized to acknowledge or pay on behalf of firm—Authority may be implied from facts and circumstances of each case — Partner, authority of, to acknowledge or pay on behalf of firm—Presumption of agency of one partner to act un behalf of others applicable to going concerns—Whether applies to dissolved partnership in regard to creditors of firm—Receiver of assets of firm with power to pay debts due by firm—Whether can give acknowledgment in respect of debt — Suit against dissolved partnership—Date of institution of suit is date of suit and not of service of summons on individual partner subsequent to suit.	S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13
— Firm to which presumption of agency of one partner to act on behalf of firm arises—Fresumption will hold good only in ease of scknowledgments or payments made in the course of partnership business — Going uncreantile concern—Each partner may be presumed to have authority to acknowledge and make payment on behalf of firm — One partner authorized to acknowledge or pay on behalf of firm—Authority may be implied from facts and circumstances of each case — Partner, authority of, to acknowledge or pay on behalf of firm—Presumption of agency of one partner to act un behalf of others applicable to going concerns—Whether applies to dissolved partnership in regard to creditors of firm—Receiver of assets of firm with power to pay debts due by firm—Whether can give acknowledgment in respect of debt — Suit against dissolved partnership—Date of institution of suit is date of suit and not of service of summons on individual partner subsequent to suit.	S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13 S 21 N 13

Firm_(Contd.)						
Suit for dissolution outstandings Receiver, if ca	and doing e in acknowle	verytbir	g for presen	rvation of a	llecting state—	S 19 N 52
Suit relating to (a) Applicati Partner	on for disch	osure of I, if part	partners—I ies to euit fr	Declaration i	nade uit	S 23 N 19
(b) Necessar	y parties	•••	•••	•••		S 22 N 18
Fishery ——Exclusive right ——Right of	to-Wheth	aer can b	e acquired h	y operation o	of S 28:	S 28 N 5
(a) Adverse p (b) Whether					A 14	2 & 144 N 7
Food	T!	41				A 8
Price of-Suit	torLimita	tion	•••		•••	
Foreclosure Foreclosure of Foreclosure of	English mor	rtgages—	Suit for—L	imitation.	main.	A 147 N 1
tainability of		•••	***	***	•••	A 147 N 2
(a) Enactme	nts as to		•••	•••	•••	A 135 N 9
(b) Limitation (c) Limitation	~ ~		•••	•••	•••	A 135 N 9 A 132 N 3
(d) Suit by r	aortgagee—.	Applicabi	lity of Arts			A 147 N 1
tinguish (e) Snit by 1		Limitatio	n_Starting	point:	A 147	A 147 N 4
(f) Suit by r				e—Maintain	ability	A 147 N 1
(g) Snit for	oreclosure c					
possessi tainable	on being giv	ren to m it for nos	ortgagee—Si	uit, whether ortgaged pro	main- nerty:	A 135 N 9
(h) Snit, who	ther one to	enforce ;	payment cha	rged upon in	move-	A 132 N 3
Foreign bill						N 3
——Dishonoured fo ——Meaning of	reign bill—i	Snit nn—	-Limitation –	-Starting po	int: A 77	A 77 N 1
Foreign contract					h-t	
——Suit on—Suit suit on the cla	im if barred	nder fore I in Briti	oign Iaw—Pl sh India	aintili, if can	onug	S 11 N 1
Suit on, in Bri	tish India	is a	an ha fakan	in defence		S 11 N 1
· ·	•		•	ı rule of l India :		S11 N 1
				india:	S 11	SINI
Foreign country Meaning of	•••		•••	•••		S 2 Cl 6
Foreign Conrt						A 117 N 3
					•••	S 12 N 2
	0.10 2	11	•••			S 14 N 5

GENERAL INDEX

2859

Foreign Court — (Contd.) -What is-Court in British Cantonment, whother foreign Court ... A 117 N 3 What is (a) Court in Coylon-Whether foreign Court A 117 N 3 (b) Court in England and Scotland other than Privy Council, A 117 N 3 A 117 N 3 (e) { ٠., (a): A 117 N 3 A 117 N 3 (e) Privy Council, whether foreign Court (f) Supreme Court of Mauritius, whether foreign Court A 117 N 3 -Whether within the meaning of Court in S. 14 S 14 N 13 Foreign instrument A 77 N 1 -Meaning of Foreign indgment -- "Judgment" as used in expression "foreign judgment" in Civil P. C .- Meaning of A 117 N 3 Indement on claim not barred under foreign law but which would be barred under Indian law-Snit on foreign judgment in British Indian Court—Plea of limitation cannot be raised ... S 11 N 1 -Meaning of A 117 N 3 -Order of Court of Native Indian State that application was step. in aid British Indian Court, if can go behind the order S 11 N 2 Suit in British Indian Courts on foreign judgment concerning promissory note-Suit on promissory noto itself-Whether on same canse of action... S 14 N 18 A 117 Suit on—Limitation (a) Exclusion of time (i) Time spent in executing decree In foreign Court. whether can be excluded A 117 N 4 (ii) Time spent in prosecuting an application to set aside ex parts decree, whether can be excluded A 117 N 4 (h) P' ilm it. Period to have en led in computing limitation for suit by plaintiff in British Indian Court on the foreign judgment S 14 N 10 ••• (c) Starting point A 117 N 4 ... (d) What is ... A 117 N 2 (e) Where foreign judgment is appealed against and appeal is dismissed... A 117 N 4 ----What is (a) Act of state passed by foreign State in its sovereign capacity. whether foreign judgment A 117 N 3 (b) Call order by Liquidation Court in foreign State authorizing institution of suits for recovery of snms from persons living outside jurisdiction of Court, whether foreign judgment ... A 117 N 3 (c) Order under S. 12. Arhitration Act, enforcing award in England, whether foreign judgment A 117 N 3 Foreigner - Alien enemy-Incapacity of legal representative to institute suit within S. 17 due to being alien enemy-Effect of ... S 17 N 8 Forfaited Property Act

Forfeited Property Act	
Whether a special law	S 29 N 6
Forfeiture	
And breach of condition-Distinguished	A 143 N 3
Debt, whether forfeiture	A6N2
Determination of tenancy by	A 139 N 9
(a) Disclaimer of title nr breach of condition by tenant, wheth	er
by itself determines tenancy	A 139 N 9
(b) Forfetture by disclaimer in cases ant governed by T. P. A	ct A 139 N 9
Forfeiture by alienation Suit for possession against alience	OI NI O. & 143 N A
tenant by landlord under S. 111, T. P. Act—Limitation: A 143 ——Forfeiture by denial of landlord's title—Denial of landlord's title	14 2, 22 120 21 4
	. A 143 NO
	A 143 N 4
-Forfeiture on remarriage of Hindu widow - Whether can	he
waived by reversioner	A 143 N 12
Suit for	
(a) Article 6, whether applies where different period of limitation	n A6N5
is prescribed by special or local law	
(b) Suit by Government - Limitation - Art. 6 and Art. 14	AGNG
applicability of (c) Suit for damages caused by misconduct of defendant	_
(2) (2) (4) (2) (4) (4) (4) (4) (4) (4)	A6N#
(e) Suit upon Statute, Act, Regulation or bye-law — Limitatio	n: A 6; A b N 1
Suit on ground of	10
(a) Illustrative cases on suit nn forfeiture governed by Art. 143	A 139 N 8
(b) Limitation-Art. 139 and Art. 143 distinguished	A 143 N 11
(c) Onus of proof as to forfeiture in such case (d) Suit by landlord .	
(i) Against whom must the snit be filed for applicabilit	у
of Art 149	
(ii) Limitation - Applicability of Art. 139 and Art. 143 .	••
(a) Suit by reversioner for possession of Hindu widows assur-	O M on an all O
on ground of forfeithre on unchastity of widow-Limitatio	
(f) Suit by reversioner for possession of widow's estate of ground of forfeiture on remarriage of Hindu widow.—Lim	
tation	A 143 N 8
	A 143 N 7
(h) Suit for possession—Limitation—Starting point: A 1	43; Å 143 N 3; A 143 N 14
(i) Suit for possession on ground of forfeiture by denial of land	A 143 N 6
(i) Suit in test for siest and of toward Timitation	. A 143 N 3
(k) Suit under Bengal Tenancy Act, S. 155 for ejectment of	A 143 N 3
tenant on ground of misuse of land-Limitation	
Waiver of	A 143 N 12
(a) Effect of	
(b) White constitutes	-
Frand Allegation of one kind of fraud—Failure of proof of fraud alleged— S. 18 N	
Another kind of fraud, if can be substituted for it S 18 1	7; A 95 N 17 S 18 N 7
Allegations of fraud-Substantial proof necessary	8 10 1.

-Burden of proof-Fraud established-Burden shifts to person who	
has committed fraud to show that plaintiff had knowledge of	
transaction beyond period of limitation	S 18 N 7
Court sale effected with knowledge of judgment-debtor-S. 18, when applies to proceedings to set aside sale	S 18 N 10
Decree obtained by Setting aside-See under Decree.	
- Dismissal of suit on ground that the alleged fraud is not proved-	
Whether covered by S 11	S 14 N 22
—Document necessary to establish right to sue, fraudulently concealed from person having right to sue—Effect of fraud in com-	
puting limitation for suit	S 18
- Effect of In computing period of limitation for application to set	
aside execution sale	A 166 N 18
Execution	
(a) Decree-holder bringing property to sale after decree-amount has been paid—Decree-holder taking steps so that no notice	
of sale may reach judgment-debtor—S 18, if applies	S 18 N 10
(b) Decree holder not guilty of fraud in bringing about sale—	D 10 H 10
(o) Diagon location and Samily of the same and a same and	
	S 18 N 14
(c) I	
low value—Whether amounts to fraud	S 18 N 10
(d) Knowledge of proceedings up to time of sale withheld from	
S, 18	B 18 N 10
of sale—	2 TO IV TO
	S 18 N 10
(f) Mere under-valuation of property to he sold in sale pro-	
clamation—Whether by itself justifies inference of fraud	S 18 N 10
clamation.—Whether by itself justifies inference of fraud	S 18 N 10
clamation—Whother by itself justifies inference of fraud	
(A) Q la hin rabb aha it has fained of dannes haldes. Dan eath area	S 18 N 10
clamation—Whether by itself justifies inference of fraud (A) S. I. beauty the first of James below. The first of James below the first of James below. (b) Suppression of notices by a deliberate contrivance—Whether amounts to fraud	S 18 N 14
(h) Suppression of notices by a deliberate contrivance—Whether amounts to fraud (i) Wilty ims. statement of value of property to be sold, in sale	
(b) Suppression of notices by a deliberate contrivance—Whether amounts to fraud (i) Willol msstatement of value of property to be sold, in sale proclamation—Whether amounts to fraud	S 18 N 14
(h) Suppression of notices by a deliberate contrivance—Whether amounts to fraud (i) Wilty ims. statement of value of property to be sold, in sale	S 18 N 14 S 18 N 10
(h) Suppression of notices by a deliberate contrivance—Whether amounts to fraud (i) Wildi ms. statement of value of property to be sold, in sale proclamation—Whether amounts to fraud	S 18 N 14 S 18 N 10
(h) Suppression of notices by a deliberate contrivance—Whether amounts to fraud (i) Wildu ims. statement of value of property to be sold, in sale proclamation—Whether amounts to fraud —Ex parts decree obtained by—Setting aside—Suit for—Suit, whether maintainable after fadure of application to set aside	S 18 N 14 S 18 N 10 S 18 N 10
(h) Suppression of notices by a deliberate contrivance—Whether amounts to fraud (i) Willul mas.statement of value of property to be sold, in sale proclamation—Whether amounts to fraud Ex parte decree obtained by—Setting aside — Suit for — Suit, whether maintainable after fadure of application to set aside decree Fraud and Limitation—Art. 95 and S. 18 distinguished Fraud as a ground of extension of limitation	S 18 N 14 S 18 N 10 S 18 N 10 A 95 N 19
(h) Suppression of notices by a deliberate contrivance—Whether amounts to fraud (i) Wildlu ms. statement of value of property to be sold, in sale proclamation—Whether amounts to fraud —Ex parts decree obtained by—Setting saide—Suit for — Suit, whether maintainable after failure of application to set aside decree —Fraud and Limitation—Art. 95 and S. 18 distinguished —Fraud as a ground of extension of limitation (a) Settion 18 and Art. 95 compared	S 18 N 14 S 18 N 10 S 18 N 10 A 95 N 19
(h) Suppression of notices by a deliberate contrivance—Whether amounts to fraud (i) Willul mas.statement of value of property to be sold, in sale proclamation—Whether amounts to fraud Ex parts decree obtained by—Setting aside—Suit for—Suit, whether maintainable after failure of application to set aside decree Fraud and Limitation—Art. 95 and S. 18 distinguished Fraud and Setting and Art. 95 compared (a) Section 18 and Art. 95 compared (b) Suit for relief on graund of fraud—Extension of limitation	S 18 N 14 S 18 N 10 S 18 N 10 A 95 N 19 A 95 N 3
(b) Suppression of notices by a deliberate contrivance—Whether amounts to fraud (i) Wilful mis-statement of value of property to be sold, in sale proclamation—Whether amounts to fraud Experte decree obtained by—Setting saide—Suit for—Suit, whether maintainable after fadure of application to set aside decree Fraud and Limitation—Art. 95 and S. 18 distinguished Fraud as a ground of extension of limitation (a) Section 18 and Art. 95 compared (b) Suit for relief on grand of fraud—Extension of limitation 1y from know-	S 18 N 14 S 18 N 10 S 18 N 10 A 95 N 19 A 95 N 3 A 95 N 3
(h) Suppression of notices by a deliberate contrivance—Whether amounts to fraud (i) Willul mas.statement of value of property to be sold, in sale proclamation—Whether amounts to fraud Ex parts decree obtained by—Setting aside—Suit for—Suit, whether maintainable after failure of application to set aside decree Fraud and Limitation—Art. 95 and S. 18 distinguished Fraud and Setting and Art. 95 compared (a) Section 18 and Art. 95 compared (b) Suit for relief on graund of fraud—Extension of limitation	S 18 N 14 S 18 N 10 S 18 N 10 A 95 N 19 A 95 N 3
(b) Suppression of notices by a deliberate contrivance—Whether amounts to fraud (i) Wilful mis-statement of value of property to be sold, in sale proclamation—Whether amounts to fraud Experte decree obtained by—Setting saide—Suit for—Suit, whether maintainable after fadure of application to set aside decree Fraud and Limitation—Art. 95 and S. 18 distinguished Fraud as a ground of extension of limitation (a) Section 18 and Art. 95 compared (b) Suit for relief on grand of fraud—Extension of limitation 1y from know-	S 18 N 14 S 18 N 10 S 18 N 10 A 95 N 19 A 95 N 3 A 95 N 3
(b) Suppression of notices by a deliberate contrivance—Whether amounts to fraud (i) Willia mis-statement of value of property to be sold, in sale proclamation—Whether amounts to fraud —Ex parte decree obtained by—Setting saide—Suit for — Suit, whether maintainable after fadure of application to set aside decree —Fraud and Limitation—Art. 95 and S. 18 distinguished —Fraud as a ground of extension of limitation (a) Section 18 and Art. 95 compared (b) Suit for relief on ground of fraud—Extension of limitation (c) Suit for relief on ground of fraud—Extension of limitation (c) Suit for relief on ground of fraud—Extension of limitation	S 18 N 14 S 18 N 10 S 18 N 10 A 95 N 19 A 95 N 3 A 95 N 3
(h) Suppression of notices by a deliberate contrivance—Whether amounts to fraud (i) Willul mas.statement of value of property to be sold, in sale proclamation—Whether amounts to fraud Ex parts decree obtained by—Setting aside—Suit for—Suit, whether maintainable after fadure of application to set aside decree Fraud and Limitation—Art. 95 and S. 18 distinguished Fraud and Committed of extension of limitation (a) Section 18 and Art. 95 compared (b) Suit for relief on graund of fraud—Extension of limitation and for suit for	S 18 N 14 S 18 N 10 S 18 N 10 A 95 N 19 A 95 N 3 A 95 N 3 A 95 N 3 S 18 N 2 S 18 N 2
(b) Suppression of notices by a deliberate contrivance—Whether amounts to fraud (i) Willia mis-statement of value of property to be sold, in sale proclamation—Whether amounts to fraud —Ex parte decree obtained by—Setting saide—Suit for — Suit, whether maintainable after fadure of application to set aside decree —Fraud and Limitation—Art. 95 and S. 18 distinguished —Fraud as a ground of extension of limitation (a) Section 18 and Art. 95 compared (b) Suit for relief on ground of fraud—Extension of limitation (c) Suit for relief on ground of fraud—Extension of limitation (c) Suit for relief on ground of fraud—Extension of limitation	S 18 N 14 S 18 N 10 B 18 N 10 A 95 N 19 A 95 N 3 A 95 N 3 S 18 N 2

Frand_(Contd.)

Frand—(Contd.)	
-Fraud in regard to execution sale-Frand of decree-holder-Reco-	
very of purchase money on ground of-Suit by auction-purchaser	
—Limitation	A 95 N
-Fraud preventing plaintiff from sping - Whether ground of	
exemption from limitation	S 18 N 2
-Fraudulent act of concealment-Open act of party, if can be	
fraudulent act of concealment	S 18 N 4
-Fraudulent concealment of document necessary to establish plain-	
tiff's right	S 18 N 13
Fraudulent concealment of document	
(a) Open extortion of documents from a party not fraudulent	
concealment of document	S 18 N 4
(h) Starting point—Time runs from date when plaintiff has the	
means of producing it or compelling its production	S 18 N 19
Ignorance of accrual of cause of action brought about hy fraud of	5 20 21 -1
defendant—If entitles plaintiff to extension of time	S 6 N 23
Knowledge of fraud	~ •
(a) Knowledge of agent whether knowledge of principal	A 95 N 13
	A 95 N 12
(c) Whether question of fact or law	A 95 N 15
Meaning of	S 18 N 4
(a) Failure to give information which party is bound to give	
under contract—Whether fraud	S 18 N 4
(b) Mere concealment of facts by person in fiduciary position	
-Whether amounts to frand	S 18 N 4
(c) Mere concealment of facts, whether amounts to fraud when	
there is no duty to disclose such facts	S 18 N 4
Money obtained bySuit for	
(a) Plaintiff's money in possession of third party—Defendant	
by fraud obtaining it from such party—Limitation	A 62 N 15
(b) Whether one for money paid upon existing consideration	
which afterwards fails	A 97 N 1
-Nature of suits for which henefit of S 18 is available	\$ 18
-Person having right to sue or apply kept from knowledge of such	a 10
right by fraud-Effect of, in computing limitation	S 18
-Person having right to sue or apply kept from knowledge of title	
on which right is founded, by fraud-Effect on computation of	S 18
limitation	5 10
Person seeking benefit of S. 18 must show that his right to sue or	S 18 N 2
apply has been kept from his knowledge by means of the fraud	A 95 N 16
——Plea of —How plea is to be set forth	S 18 N 6
Plea of fraud-Particulars of fraud should be specifically stated	5 10 2. 0
-Plea of, in defence-Whether such plea can be raised where a suit	A 95 N 18
	A 93 It 10
bna bu.	
that by fraud he was kept from knowledge of his right to seek	S 18 N 7
relici	S 18 N 6
sud	S 15 N 2
pother	
That best book from him at	
co-parcener before partition—Fact kept back from him at	

Frand-Postponement of starting point of limitation on ground of fraud-(Contd.)

Contd.)	
the time of partition on representation that debt was out.	
standing—S. 18, if applies	S 18 N 5
(c) Court must find when plaintiff got knowledge of the fraud	S 18 N 13
(d) Document necessary to establish such right in S 18-	
Meaning of Right to money, capable of being established on	
admitted facts-Document only evidence of obligation-	
Whether document necessary to establish right	S 18 N 11
(e) Fraud committed by decree-holder in bringing to sale judg.	
ment-debtor's proporty-Application to set aside sale on	
ground of fraud -S 18, if applies	S 18 N 8
(A) The A is a first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the fir	8 18 N 8
••	S 18 N 4
and active	
frand in the means adopted to keep the person injured out	
of knowledge of his right	S 18 N 4
(i) Fraud must bave existed at the inception of the cause of	
action	S 18 N 2
(1) Frandulent concealment of document-Plaintiff or applicant	
must, through the fraudulent concealment, be unaware of	
existence of document	S 18 N 12
(k) Knowledge of fraud-Knowledge must be clear and definite	
knowledge of facts constituting the particular fraud and not	
mere susnicion	S 18 N 13
(1) Knowledge of fraud - Knowledge must enable person defrauded	
to seek bis remedy in Court	S 18 N 18
(m) Limitation to be computed from the time when fraud became	
known to person injuriously affected by fraud	S 18 N 13
(n) Mere fact that cause of action is founded on fraud is not	
enough	S 18 N 2
(o) Negligonce in pursuing means available for discovering fraud	
-Whether will start lumitation running before date of actual	
knowledge	8 18 N 13
(p) Party knowing of his right to seek rolief but prevented by	
fraud from exercising his right.—Whether entitled to benefit	
of S. 18	S 18 N 5
(q) Person collecting debts due to deceased and concealing the	
fact from deceased's heir-S. 18, if applies	S 18 N 5
(r) Person defrauded must have been kept from knowledge of his	
right to sue or apply	S 18 N 5
(s) Person injured aware of his right to seek his relief-Whether	
entitled to benefit of S. 18	8 18 N 5
(t) Persons against whom time can be extended	S 18 N 14
() n :- : 1	_
	S 18 N 2
(v) S. 18 does not apply to complaints of criminal offences	S 18 N 3
(w) S. 18, Limitation Act and S. 26, English Real Property	
Limitation Act—Distinction between	S 18 N 13
Pre-emption	
(a) Failure to give pre-omptor notice of sale—Whether brings	
the case within S. 18	S 18 N 9
(b) Mero silence of vendor and vendee-Whether amounts to	
frand	8 18 N 9

П

Frand-Pre-emption-(Contd.)

			n(Conta.)	rrand-rre-empile	
		b deliherata intenti			
	er ameunts	of his right-Whe	or from knowled	pre-empt	
8 18 N	•••			to fraud	
		openly taken by			
	s net apply	of vendoe—S, 18 do	from knowledga	net kept	
8 18 N	sale	t havo knowledge of	re-emptor may r	though p	
Ī	in favour of	's favour but really	ed in one perso	(e) Sale effect	
•		eals that fact—Plai			
S 18 N	ies	rightS. 18, if app	a knowledga of b	kept from	
ŧ	rson relying	e presumad until p	-Fraud cannot	Presumption of	
S 18 N			s his case	on it establishe	
	•••		proof	(a) Burden of	
A 95 N 1		ed on to defendant	proof, when shi	(b) Burden of	
		based on fraud and		1.7	
		based on fraud but			
		dge of his right to s			
A 95 N 3	., .,	-Bo or 1110 115 III 10 D	distinguished		
1	Registance	chaser for possession	•		
		debtor—Allegation			
		nt—Suit, whether o			
A 95 N 4		10-0410, 110000001 0		of fraud	
	o.sbarer by	pasa of property by			
		it by co sharer who			
		ce-Limitation app			
1	-Limitation	successor of shebait	shebait—Suit hy	(f) Fraud of	
A 95 N 14	•••		ng point	—Startı	
A 95 N 4		*** **	ns	(g) Illustratio	
A 95 N 2	plies	to which Art. 95 a	n-Nature of cas	(h) Limitatio	
95; A 95 N 12	A S	***	n-Starting poin	(1) Limitatio	
		-Whera suit is not			
A 120 N 23	***			Art. 95	
_	fraud" in	relief on ground			
A 95 N 10		TOTION OU STOWNS		Art. 95	
	ering fraud.	os available for disco	e in pursning me	(1) Negligene	
. 05 37 10		on running before d			
A 95 N 12		•••		knowled	
		nily-Unauthorized			
	hare—Suit	member getting less	f of minor-Min	on behal	
A 95 N 4	raud-Suit,	hare—Allegation of			
	hia miaht ta	traud	one on ground o	whether	
A 95 N 3	ns right to	from knowledge of	mitation	(n) Francin	
A 95 N 2	hin Art. 95:		not party defraud	(a) Plaintiff	
		npensation for dama			
A 95 N 10			by fraud practise		
	e execution	ons Suit to set asi	nd general provi	(a) Specific a	
A 95 N 2	Art. 95 or	wbether governed b	ground of frand,	sale on	
ASSIV	•••		·	Art. 12	
A 95 N 2		ns as to limitation	nd general provis	(r) Specific a	
A 95 N 11	ound to be	dvanced on transfer	clund of money	(s) Suit for 1	
A 55 H 12	•••	plicable	nt-Limitation a	fraudule	

(t) Surt for return of bonds lost or acquired by theft or dishovest misappropriation or conversion, whether suit on ground of fraud	Fraud-Presumption of, etc(Contd.)		
ground of fraud (u) Sut for rectification of deed on ground of fraud, whether such suit (v) Sut for setting aside document on ground of fraud — Limitation—Startung point (w) Suit for setting aside fraudulent sale—Suit by certified piritation — Characteristic property of the first property of the first property of the first property of the first property of the first property of fraud—Derectified piritation — Characteristic property of fraud—Derectified piritation — Characteristic property of fraud—Derectified piritation — Characteristic property of fraud—Derectified piritation — Characteristic property of fraud—Derectified piritation — Characteristic property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified property of fraud—Derectified prop	(t) Suit for return of bonds lost or acquired by theft or d		
(u) Surt for rectification of deed on ground of fraud, whether such suit (v) Suit for setting aside document on ground of fraud — Limitation—Starting point (w) Suit for setting aside document on ground of fraud — Limitation — Charter — Limitation — A 120 N 2 (x) Suit for setting saide sale under Public Demands Recovery Act for fraud of purchaser, whether suit for relief on ground of fraud — What is—Test — A 95 N 10 (y) Suit on ground of fraud—What is—Test — A 95 N 10 (y) Suit on ground of fraud—What is—Test — A 95 N 10 Suit hy judgment-debtor to set aside decree against him on ground of fraud—Decree-holder cannot eveludo pendo of pendoncy of suit in computing limitation for application for oxecution of decree — S 15 N 11 General Glauses Act — S 2 N 1 — S. 3, Cl. 52—Signature—Meaning of — S 20 N 24 — S. 10—Scope and applicability of — S 4 N 2 Good faith — Error of judgment is different from had faith — S 14 N 20 — What amounts to—Indulgence to be granted only where error is one which might be committed by reavonable and prudent man exercising due diligence and caution — S 14 N 20 Whether inference of good faith is reasonable or is warranted by facts proved is a quertion of law — S 14 N 21 Goods — Definition of, in Sale of Goods Act—How far applicable to Limitation — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10 — S 10		on	1 05 15 4
such sut (v) Sut for setting aside document on ground of fraud — Limitatun—Startung point (w) Suit for setting aside fraudulent sale—Suit by certified purchaser—Limitation (x) Suit for setting aside sale inder Public Demands Recovery Act for fraud of purchaser, whether suit for relief on ground of fraud — What is—Test A 95 N 10 (y) Suit on ground of fraud—What is—Test A 95 N 10 (y) Suit on ground of fraud—What is—Test A 95 N 10 (y) Suit os set aside decree—Limitation —Suit by judgment-debt to set aside decree against him on ground of fraud—Decree-holder cannot evoludo period of pendency of suit in computing limitation for application for oxecution of decree Definitions in—When cau be applied to Act S 20 N 24 —S. 3. (1.62—Signature—Meaning of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scop	(u) Surt for rectification of deed on ground of fraud, whet	her	A 90 N 4
(w) Sut for setting saide fraudalent sale—Sut by certified purchaser—Limitation (x) Suit for setting saide sale noder Public Demands Recovery Act for fraud of purchaser, whether suit for relief on ground of fraud (y) Suit on ground of fraud—What is—Test	such suit	4	A 95 N 10
(w) Suit for setting aside fraudalent sale—Suit by certified purchaser—Limitation			
chaser—Limitation (x) Surt for setting and a sale noter Public Demands Recovery Act for fraud of purchaser, whether suit for rehef on ground of fraud (y) Surt on ground of fraud—What is—Test A 95 N 4 A 25 N 4 A 25 N 8 (2) Surt to set axide decree—Limitation —Surt hy judgment-debtor to set axide decree against him on ground of fraud—Decree-holder cannot evelude period of pendency of suit is computing limitation for application for execution of decree —Definitions in—When cau be applied to Act S 2 N 1 S 2 N 2 S 10—Scope and applicability of S 3 C, 162—Signature—Meaning of S 20 N 24 S 10—Scope and applicability of S 4 N 2 Good faith —Error of judgment is different from had faith S 14 N 20 Meaning of S 20 N 24 S 20 N 24 S 10—Scope and applicability of S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20 N 24 S 20	tation—Starting point	4	A 91 N 20
Act for fraud of purchaser, whether suit for relief on ground of fraud	chaser—Limitation	/	A 120 N 2
of fraud	(x) Suit for setting aside sale under Public Demands Recov-	ery	
(y) Sunt on ground of fraud—What is—Test			
(2) Suit to set aside decree—Limitation —Suit by judgment-debtor to set asade decree against him on ground of fraud—Decree-holder cannot exclude period of pendency of suit in computing limitation for application for execution of decree S 15 N 11 General Clauses Act —Definitions in—When can be applied to Act S 2 N 1 —S. 3, Cl. 52—Signature—Meaning of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 20 N 24 —S. 10—Scope and applicability of S 2 N 1 General Clauses Act —Definitions in—When can be applied to Act S 2 N 1 Good faith —Error of judgment is different from had faith S 14 N 20 What amounts to—Indulgence to be graated only where error is one which might be comnitted by reasonable and prudent man exercising due diligence and caution S 14 N 20 Whether inference of good faith is reasonable or is warranted by facts proved is a question of law S 14 N 21 Goods —Definition of, in Sale of Goods Act—How far applicable to Limitation Act S 15 N 1 —Goods sold—Absence of agreement to pay in kind—Suit for price of goods—Limitation A 51 N 1 Goods—Limitation A 52 N 8 bill given—Allegation that hundis were not executed as promised, whether extends period of limitation A 52 N 8 bill given—Allegation that hundis were not executed as promised, whether necessary for applicability of A 54; A 54 N 1 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8	(v) Suit on ground of (rand—What is—Test		
of fraud—Decree.holder cannot eveludo period of pendency of suit in computing limitation for application for oxecution of decree \$ 15 N 11 General Clauses Act \$ 2 N 1 — Definitions in—When can be applied to Act \$ 2 N 1 — S. 3, Cl. 62—Signature—Meaning of 8 2 N 1 — S. 10—Scope and applicability of 8 14 N 20 Good faith	(z) Suit to set aside decree—Limitation		
in computing limitation for application for execution of decree \$ 15 N 11 General Clauses Act			
General Glauses Act Definitions in—When cau be applied to Act Definitions in—When cau be applied to Act S. 2. 0. 62—Signature—Meaning of 8 20 N 24 S. 10—Scope and applicability of 8 4 N 2 Good faith Error of judgment is different from had faith 8 14 N 20 Meaning of 8 20 N 34 What amounts to—Indulgence to be granted only where error is one which might be committed by reasonable and prudent man exercising due diligence and caution 8 14 N 20 Whether inference of good faith is reasonable or is warranted by facts proved is a question of law 8 14 N 21 Goods Definition of, in Sale of Goods Act—How far applicable to Limitation Act A 52 N 3 Delivery of—Compensation for hreach of contract—Suit for—Limitation A 51 N 1 Goods sold—Absence of agreement to pay in kind—Suit for price of goods—Limitation A 52 N 3 Goods sold and delivered (a) Suit for price of (i) Acknowledgment, whether extends period of limitation: A 52 N 8 bill given—Allegation that handis were not executed as promised, whether necessary for applicability of A 54 A 54 N 1 A 53 N 1 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8	of fraud—Decree holder cannot exclude period of pendency of s	uit	2 15 37 11
Definitions in—When can be applied to Act		'	2 10 M 11
S. 3, Cl. 52—Signature—Meaning of			
S. 10—Scope and applicability of		•••	
Good faith Error of judgment is different from had faith Error of judgment is different from had faith Meaning of		•••	
Error of judgment is different from had faith 8 14 N 20 Meaning of 8 2 Ol 7 What amounts to—Indulgence to be granted only where error is one which might be committed by reasonable and prudent man exercising due diligence and caution 8 14 N 20 Whether inference of good faith is reasonable or is warranted by facts proved is a question of law 8 14 N 21 Whether person has acted in good faith is a question of fact 8 14 N 21 Goods Definition of, in Sale of Goods Act—How far applicable to Limitation Act A 52 N 4 Delivery of—Compensation for breach of contract—Suit for—Limitation Act A 51 N 1 Goods sold—Absence of agreement to pay in kind—Suit for price of goods—Limitation		•••	8 4 N 2
Meaning of			
What amounts to—Indulgence to be granted only where error is one which might be committed by reasonable and prudent man exercising due diligence and caution		•••	
one which might be committed by reasonable and prudent man exercising due diligence and caution			S 2 Cl 7
exercising due diligence and caution		r is	
Whether inference of good faith is reasonable or is warranted by facts proved is a question of law			S 14 N 20
Whether person has acted in good faith is a question of fact S 14 N 21 Goods Definition of, in Sale of Goods Act—How far applicable to Limitation Act		hy	
Goods Definition of, in Sale of Goods Act—How far applicable to Limitation Act Delivery of—Compensation for breach of contract—Suit for—Limitation Goods sold—Absence of agreement to pay in kind—Suit for price of goods—Limitation Goods sold and delivered (a) Suit for price of (i) Acknowledgment, whether extends period of limitation (ii) Delivery of railway receipt, whether date of delivery bill given—Allegation that handis were not executed as promised, whether necessary for applicability of Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 52 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art. 54 Art.	facts proved is a question of law		
Definition of, in Sale of Goods Act—How far applicable to Limitation Act Delivery of—Compensation for breach of contract—Suit for— Limitation		•••	5 14 N 21
tation Act Delivery of — Compensation for breach of contract — Suit for— Limitation		,	
Delivery of—Compensation for hreach of contract—Suit for— Limitation			A 59 N 4
Goods sold—Absence of agreement to pay in kind—Suit for price of goods—Limitation A 52 N 3 Goods sold and delivered (a) Suit for price of (i) Acknowledgment, whether extends period of limitation: A 52 N 8 (ii) Delivery of railway receipt, whether date of delivery A 52 N 8 bill given—Allegation that hundis were not executed as promised, whether necessary for applicability of Art. 54 A 53 N 1 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 52 N 8 A 53 N 1 A 53 N 1 A 53 N 1 A 52 N 8 A 53 N 8 A 52 N 8 A 53 N 8 A 52 N 8	- Delivery of Compensation for breach of contract - Suit for	r <u></u>	11 02 11 3
of goods—Limitation	Limitation	•••	A 51 N 1
Good's sold and delivered (a) Sut for price of (i) Acknowledgment, whether extends period of limitation: (ii) Delivery of railway receipt, whether date of delivery (iii) Delivery of railway receipt, whether date of delivery (iv) A 52 N 8 (iv) A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery (iv) A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 54 N 1 (iv) A 53 N 1 (iv) A 53 N 1 (iv) A 52 N 8 (iv) A 53 N 1 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv) A 52 N 8 (iv			A 50 N 9
(a) Sunt for price of (i) Acknowledgment, whether extends period of limitation: (ii) Delivery of railway receipt, whether date of delivery A 52 N 8 (iii) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery A 52 N 8 (iv) Delivery of railway receipt, whether date of delivery receipt receipt receipt receipt receipt receipt receipt receipt receipt receipt receipt receipt receipt receipt receipt receipt receipt receipt receipt re		•••	A 02 N 3
(ii) Delivery of railway receipt, whether date of delivery	(a) Suit for price of		
	(i) Acknowledgment, whether extends period of limitati	on:	A 52 N 8
			A 52 N 5
bill given—Allegation that handis were not executed as promised, whether necessary for applicability of At. 54			
as promised, whether necessary for applicability of A 54; A 54 N 1 A 53 N 1 A 52 N 8 A 52 N 8 A 52 N 8			
Art. 54 A 54; A 54 N 1 A 53 N 1 A 53 N 1 A 52 N 8 A 52 N 8 A 52 N 8			
A 53 N 1 52 N 2; A 52 N 8 A 52 N 8			A 54 N 1
A 52 N 8	, /\v. ++ m ++		A 53 N 1
			A 52 N 8

	GENERAL INDI		
Goods-Goods sold and delive	ered_Suit for pr	ice of(Contd.)	
(viii) Suit coosisting			and
which cannot	be split up		A 52 N 6
(ix) Suit consisting	of several distin	net and independe	oot
	can bo split up	***	A 52 N 6
(x) Suit consisting			nos A 52 N 6-
sold and other	for fees for medic	cal attendance	
(xi) Suit for price o —Limitation		O Cantooments Do	A 52 N 6
(xii) Suit to onforce		blunds beilmung sh	
	l—Limitation	as Buppines and an	A 52 N 3
(xiii) Suit to enforce	decroo dobt again	st sons where deci	ree
for price of g	oods sold and do	livored was obtain	ed A 52 N 2
	of Hiodu family-		
(xiv) Suit to recover		ption to newspaper	A 53 N 4
Limitation (xv) Suit to recove	r price of medic	ince ennalied—Lir	ni.
tation	t buce of medic	inos supplica—zir	A 52 N 4
(xvi) "Whon period	of credit expires"	more promise of vo	n.
dee 10 simpl	o transaction of s	sale of goods to p	ay
		mounts to period	of A 53 N 1
credit within	Art. 53	t -1 -11 - nodit w	
(xvii) "When poriod	of credit expires, e given, how to fin	Allether promit a	A 53 N 1
(xviii) Where account	t between narties	can be considered	to
be mutual, cu	rrent and open acc	coupt	403 110
(-in) Where 63 -	-m- 3 -f am- del in a	man - Limit	
(xix) Where fixed pe	oriog of create is a	igroed upon—Limit	" KON 9 A 53"
tion	***		A 52 K 2, 11 55
tion (b) Purchasor entoring t	bird person's nam	o as purchaser—Ve	A 93 K 2, 11 00
tion (b) Purchasor entoring to dor getting docroof	bird person's nam for bis price again	o as purchaser—Ve st third porsoo—Si	A D3 N 2, 11 D5
tion (b) Purchasor entoring t	bird person's nam for bis price again	o as purchaser—Ve st third porsoo—Si	A D3 N 2, N D0
tion (b) Purchasor entoring to dor getting docroom to by third porson aga Limitation Goods to be delivered.—Me	ibird person's name for his price against inst real purchaser	to as purchaser—Vest third persoo—Si for decree amount	A 52 N 2
tion (b) Purchasor entoring to dor getting docroof by third porson aga Limitation —Goods to be delivored—Me (a) Extension of time—A	ibird person's name for his price against inst real purchaser	to as purchaser—Vest third persoo—Si for decree amount	A 52 N 2
tion (b) Purchasor entoring to dor getting docroo is by third porson aga. Limitation —Goods to be delivored—Mo (a) Extension of time—A of limitation.	bird person's name for bis price again inst real purchaser oney advacced in p acknowledgmoot, w	o as purchaser—Vest third persoo—Selfor decree amount aymont of—Suit for hother extends periods	A 52 N 2
(b) Purchasor entoring to dor getting docroot by third porson aga Limitation —Goods to be delivered—Mc (a) Extension of time—A of limitation—Starties (b) Limitation—Starties (c)	bird person's name for his price against inst real purchaser oney advacced in packnowledgmoot, w	to as purchaser—Vest third porsoo—Se for dorroe amount of Suit for hother extends pori	A 52 N 2 A 52 N 2 A 51 N 4 A 51 N 4
tion (b) Purchasor entoring to dor getting docrooming the first possible to be third possible to be delivered—Me (a) Extension of time—A of limitation—Startion (b) Money advanced un Money advanced un tion.	cbird porson's name for bis price against real purchaser may advanced in packnowledgmoot, with the point against real purchaser may be a point against the pays and the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays aga	to as purchaser—Vest third porsoo—Si for decree amount aymont of—Suit for thother extends per A 51; A 5 mont of goods to	A 52 N 2 A 52 N 2 A 51 N 4 1 N 1; A 51 N 4 be A 51 N 1
(b) Purchasor entoring to dor getting docroot by third porson aga Limitation —Goods to be delivered—Mc (a) Extension of time—A of limitation—Starties (b) Limitation—Starties (c)	cbird porson's name for bis price against real purchaser may advanced in packnowledgmoot, with the point against real purchaser may be a point against the pays and the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays aga	to as purchaser—Vest third porsoo—Si for decree amount aymont of—Suit for thother extends per A 51; A 5 mont of goods to	A 52 N 2 A 52 N 2 A 51 N 4 A 51 N 4
(b) Purchasor entoring to dor getting docroot by third porson aga Limitation —Goods to be delivered—Mc (a) Extension of time—A of limitation (b) Limitation—Startiog (c) Money advanced un delivered—Goods n —Meaning of	cbird porson's name for bis price against real purchaser may advanced in packnowledgmoot, with the point against real purchaser may be a point against the pays and the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays aga	to as purchaser—Vest third porsoo—Si for decree amount aymont of—Suit for thother extends per A 51; A 5 mont of goods to	A 52 N 2 A 52 N 2 A 51 N 4 1 N 1; A 51 N 4 be A 51 N 1
tion (b) Purchasor entoring to dor getting docroomy the first possible to be third possible to be delivered—Me (a) Extension of time—Me of limitation—Startion (b) Limitation—Startion (c) Money advanced undelivered—Goods n—Meaning of Government	cbird porson's name for bis price against real purchaser may advanced in packnowledgmoot, with the point against real purchaser may be a point against the pays and the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays aga	to as purchaser—Vest third porsoo—Si for decree amount aymont of—Suit for thother extends per A 51; A 5 mont of goods to	A 52 N 2 A 52 N 2 A 51 N 4 1 N 1; A 51 N 4 be A 51 N 1
(b) Purchasor entoring to dor getting docrool by third porson aga Limitation —Goods to be delivored—Me (a) Extension of time—A of limitation (b) Limitation—Startiog (c) Money advanced undelivored—Goods n—Meaning of Government —Adverse possession against	cbird porson's name for bis price against real purchaser may advanced in packnowledgmoot, with the point against real purchaser may be a point against the pays and the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays against the pays aga	to as purchaser—Vest third porsoo—Si for decree amount aymont of—Suit for thother extends per A 51; A 5 mont of goods to	A 52 N 2 A 52 N 2 A 51 N 4 A 51 N 4 bo A 51 N 1 1 N 3; A 52 N 4
(b) Purchasor entoring to dor getting docrool by third porson aga Limitation —Goods to be delivored—Me (a) Extension of time—A of limitation (b) Limitation—Startiog (c) Money advanced undelivored—Goods n—Meaning of Government —Adverse possession against (a) Acquisition of title (f) Burden of proc	bird porson's name or bis price against real purchaser	to as purchaser—Vest third porsoo—Si for decree amount ayment of—Suit for the theorem of the first of the form of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the firs	A 53 N 5. 11 10 10 10 10 10 10 10 10 10 10 10 10
tion (b) Purchasor entoring to dor getting docrood by third porson aga Limitation —Goods to be delivered—Me (a) Extension of time—dof limitation (b) Limitation—Startiog (c) Money advanced undelivered—Goods n—Meaning of Government —Adverse possession against (a) Acquisition of title (i) Burden of proc (ii) Manner of	ibird porson's name for bis price again instreal purchaser or construction of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the p	to as purchaser—Vest third porsoo—Si for decree amount ayment of—Suit for the theorem of the first of the form of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the first of the firs	A 52 N 2 init A 52 N 2 od A 51 N 4 11N 1; A 51 N 4 bo A 51 N 1 11N 3; A 62 N 4 A 149 N 9 A 149 N 9
(b) Purchasor entoring to dor getting docrool by third porson aga Limitation —Goods to be delivored—Me (a) Extension of time—A of limitation (b) Limitation—Startiog (c) Money advanced undelivored—Goods n—Meaning of Government —Adverse possession against (a) Acquisition of title (i) Burden of proc (ii) Manner of (b) What constitutes	ibird porson's name for bis price against real purchaser	to as purchaser—Vest third person—Step of decree amount of —Suit for checher extends period of goods to tation	A 52 N 2 int A 52 N 2 int int A 52 N 2 int int int int int int int in
(b) Purchasor entoring to dor getting docroot by third porson aga Limitation —Goods to be delivered—Me (a) Extension of time—A of limitation (b) Limitation—Startiog (c) Money advanced undelivered—Goods not entore the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month o	ibird porson's name for bis price again instreal purchaser or construction of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the price of the p	to as purchaser—Vest third person—Step of decree amount of —Suit for checher extends period of goods to tation	A 52 N 2 or A 51 N 4 IN 1; A 51 N 4 be A 51 N 1 IN 3; A 62 N 2 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9
tion (b) Purchasor entoring to dor getting docroof by third porson aga Limitation —Goods to be delivered—Me (a) Extension of time—Me of limitation (b) Limitation—Startion (c) Money advanced undelivered—Goods n—Meaning of Government —Adverse possession against (i) Acquisition of title (i) Burden of proceedings of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of th	ibird porson's name for bis price against real purchaser	to as purchaser—Vest third person—Step of decree amount of —Suit for checher extends period of goods to tation	A 52 N 2 init A 52 N 2 in A 51 N 4 1 N 1; A 51 N 4 bo A 51 N 1 1 N 3; A 62 N 4 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9
(b) Purchasor entoring to dor getting docroot by third porson aga Limitation —Goods to be delivered—Me (a) Extension of time—A of limitation (b) Limitation—Startiog (c) Money advanced undelivered—Goods not entore the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month of the month o	ibird porson's name for bis price against real purchaser	to as purchaser—Vest third porsoo—Start prosoo—Start prosoo—Start prosoo—Start prosoon protection of goods to tation A 5	A 52 N 2 init A 52 N 2 if iod A 51 N 4 11 N 1; A 51 N 4 bo A 51 N 1 11 N 3; A 62 N 4 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9
(b) Purchasor entoring to dor getting docroot by third porson aga Limitation Goods to be delivered—Me (a) Extension of time—A of limitation (b) Limitation—Startiog (c) Money advanced undelivered—Goods maning of Government Adverse possession against (a) Acquisition of title (i) Burden of proc (ii) Manner of (b) What constitutes Appeal by—Limitation—Application by (a) For execution—Limitation of proc (c) For execution—Limitation of processing against the second of the constitutes of the constitutes of the constitutes of the constitutes of the constitutes of the constitutes of the constitutes of the constitutes of the constitutes of the constitutes of the constitutes of the constitutes of the constitutes of the constitutes of the constitutes of the constitutes of the constitutes of the constitute of the constitutes of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the constitute of the	bird porson's name for bis price against real purchaser	to as purchaser—Vest third porsoo—Si for docros amount aymont of—Suit for abother extends por hother extends to find the extends to find the extends to find the extends to find the extends to find the extends for the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the extends of the	A 52 N 2 init A 52 N 2 if iod A 51 N 4 11 N 1; A 51 N 4 bo A 51 N 1 11 N 3; A 62 N 4 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9
tion (b) Parchasor entoring to dor getting docroof by third porson aga Limitation —Goods to be delivored—Me (a) Extension of time—A of limitation (b) Limitation—Startion (c) Money advanced undelivored—Goods n —Meaning of Government —Adverse possession against (a) Acquisition of title (b) Burden of proc (ii) Manner of (b) What constitutes —Applead by—Limitation —Application by (a) For execution—Limit (b) Limitation —Applicability of Bankrupte Applicability of Bankrupte	bird porson's name for bis price against real purchaser	to as purchaser—Vest third porsoo—Start prosoo—Start prosoo—Start prosoo—Start prosoo—Start prosoon protection of goods to tation A 5	A 52 N 2 or or A 52 N 2 or or A 51 N 4 in N 1, A 51 N 4 bo A 51 N 1 in N 3, A 62 N 4 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 8
(b) Purchasor entoring to dor getting docrool by third porson aga Limitation —Goods to be delivored—Me (a) Extension of time—A of Insilation (b) Limitation—Startiog (c) Money advanced undelivored—Goods n—Meaning of Government —Adverse possession against (a) Acquisition of title (i) Burden of proc (ii) Manner of (b) What constitutes —Application by —Limitation —Application by (a) For execution—Limit (b) Limitation —Applicability of Bankrupte —Applicability of Bankrupte	bird porson's nam for his price again inst real purchaser	to as purchaser—Vest third porsoo—St for docros amount for docros amount aymont of—Suit for chother extends period for the form of goods to the form of goods to the form of goods to the form of goods to the form of goods to the form of goods to the form of goods to the form of goods to the form of goods to the form of goods to the form of goods to the form of goods to the form of goods to the form of goods to the form of goods to the form of goods to good the form of good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for good for	A 52 N 2 init A 52 N 2 if od A 51 N 4 1 N 1; A 51 N 4 bo A 51 N 1 1 N 3; A 62 N 4 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 9 A 149 N 3 A 149 N 3 A 149 N 3 A 149 N 3 A 149 N 3 A 149 N 3

	4.2. 1					
overnment_(Co						
Applicability o						A 149 N 3
Central Govern	•••		•••	•••	A 14	9, A 149 N 2
Government 10						
				within Art. 14		A 149 N 7
Provincial Go	rernment—	Suit by-	Before Fe	edoral Court—		
tation	•		•••	•••		9, A 149 N 2
Provisions for		n of ease	ment, wh	ether applicab	le to	
Government	•••	•••	•••	•••		A 149 N 3
Suit against_	Limitation	•••	• •	•••	•••	A 149 N 2
Sunt by						
(b) Summar	y sunt by (within Art. 14 Specific Relief		A 149 N 4
	imitation	···.				A 149 N 2
				rovisions of Art		A 149 N 10 A 149 N 3
				-Limitation	ı	A 149 N 5
				vernment — Li		27 145 11 0
tion	·			of rent-free la		A 149 N 7
Limita				**		A 130 N 7
-Suit on hehalf	of					
(a) Illustrat				t. 149 ntrusted hy Go	vorn.	A 149 N 4
				-Limitation		A 149 N 6
(o) Suit by	Railway C	ompany a	cting as	managing agen	ts of	
		spect of la	od belong	ing to State ra	ilway	
-Limi		. :	***		***	A 149 N 4
Transferee of- had acquired proof in such	l prescriptiv	re title ag	ainst Gov	ernment-Nati	are of	
		o mring is i	inder Art	149	•••	A 149 N 7
Sovernment of In						
Section 288	•••	•••	•••	•••	•••	S 1 N 1
luardian						
Alienation by of Arts. 44 a		etting asi	1eLimit	ation—Applica	bility	4 01 17 5
De facto fema		of minor d	anabtan	Albania bi	Cook	A 91 N 5
for amagach	ment by	or millor o	- Tim	itation — Sta	-Duit	
point				***		A 125 N 16
De facto gua		indu min	or — Tra	nsfer hy—Wh	ether	
binding on m	inor	٠			•••	A 44 N 6
~ ' '	, ,,,,,			fer of propert	,, 2,	
^	, ,,,,					A 44 N 6
^	, ,,,,,			1's property_		
^.				i's property_	_Sunt	A 44 N 6 A 126 N 5
tation		-		and Wards A	Suit	
tation	nfant in po	·	infant's	i's property_	Suit	A 126 N 5

Guardian—(Contd.)	
- Guardian of limited female owner-Alienation by-Suit in respect	
of, by reversioner -Declaration that alienation is not binding on	
reversion—Limitation	A 120 N 34
-Hindu mother as guardian-Alienation by, of property of minor	
son-Death of minor-Mother succeeding as beir-Suit by rever-	
sioner for impeaching alienation—Limitation	A 125 N 16
Hindu widow, natural guardian of her minor sons banding over	
money to her brother for benefit and education of her sons-	~ * ~ 37 40
Brother, if trustee for specific purpose	S 10 N 13
Knowledge of, whether can be imputed to minor	A 127 N 16
-Natural guardian-Who is	A 44 N 5
-Security bond executed by guardian-Snit to recover, out of pro-	4 -00 37 0
perties given as security, money due by guardian-Limitation	A 132 N 8
Suit against	A 62 N 25
(a) By ward, for specific sums received by guardian—Limitation:	A 62 N 20
(b) For specific sums received by guardian during plaintiff's	A 120 N 2
minority—Limitation	A 120 H a
Transfer by owner of property not as the property of minor but as bis own-Suit for setting aside by minor-Limitation	A 44 N 5
5371 - 41	A 89 N 7
9779 1. 1011	A 44 N 5
Guarantee	A 65 N 4
-Breach of contract-Suit for compensation for-Limitation	7 00 11 2
Haqq-i-chaharam	1 00 17 00
Suit for-Limitation	A 62 N 30
Haqqs	
——Arrears of—Suit for—Limitation	A 132 N 20
Haqqs within Art. 132-Meaning of	A 132 N 20
-Share of-Suit for-By one cosharer against another co-sharer	
who has improperly received his abare of haqqs-Limitation	A 132 N 20
Helr	
- Heir of deceased Mahomedan-Suit by, for recovery of his share	
	A 120 N 13
Hoirship to a Hindu-Declaration of Suit for-Limitation-	A 120 N 31
> tur ting Point	A 120 N 51
—Minor heir	
(a) Of intestate—Suit by, for share of property—Limitation— Time, whether extended by virtue of S. 6, Limitation Act:	A 123 N 13
(b) Of accident hands that Court has for accident Timitation	
Time, whether extended by virtue of S. 6, Limitation Act:	A 123 N 13
extended by virtue of S. 6, Limitation Act	A 123 N 13
——Snit by	
(a) Against co-heir—For recovery of abare of money belonging	A 62 N 9
to deceased person recovered by the other heir-Limitation	V 07 11 0
(b) Against person in possession—Limitation—Where person in	A 123 N 6
possession takes out letters of administration (c) Against person in wrong(nl possession—Limitation	A 123 N 6
(d) For money drawn from bank which had been invested	
therein hy defendant and which had belonged to deceased	
lady-Limitation	A 62 N 31

GENERAL INDEX	2009
Heir-Suit by-(Contd.)	
(e) For moveable property—Limitation	A 120 N 12
(f) For possession of immuvable property, by beir of Hinda or	11 220 24 12
Mahomedan femalo who is full owner of property-Limita-	
tion	A 141 N 5
(g) For possession of property alienated by administrator with-	
ont permission of Court—Lumitation	A 91 N 12
(b) For property of intestato - Limitation - Starting point -	
Where under Chinese Customary law, widow of intestate	1 200 37 44
has control of inheritance during her lifetime	A 123 N 11
(i) For share of inheritance against administrator — Limita- tion — Where deceased person is governed by the Indian	
	A 123 N 4
	A 125 M 4
	A 91 N 12
	11 51 11 12
Hereditary uffice—See under Office.	
High Court	
——Appeal to	
(a) From decree of Madras City Civil Court-Limitation	A 151 N 2
(h) From judgment of Single Judgo of High Court made in	
exercise of appellato jurisdiction under Letters Patent -	
Limitation	A 156 N 2
(c) From order—Appeal under Civil Procedure Code—Limitation	
-Starting point-Where judgment is given but order is not	
drawn up	A 156 N 6
(d) From order of Civil Court under Criminal P. C., S 476 -	
Limitation	A 155 N 2
(e) From order of Madras City Civil Court—Limitation (f) From order of Single Judge of High Court—Limitation	A 151 N 2 A 155 N 3
 (f) From order of Single Judge of High Court—Limitation (g) From order of Subordinate Court refusing leave to appeal to 	N 100 N 0
Privy Council—Provision for such appeal—Limitation A 15	8 A 158 N 1
(b) Under Burma Courts Act, S 27-Limitation	A 156 N 2
(1) Under Burma Courts Act, S. 49 - Appeal from Court of	
Recorder, Rangoon-Limitation	A 156 N 3
(1) Under Civil Procedure Code	
(1) Appeal from decree	
(a) Amendment of decree, whether gives fresh start-	
ing point for such appeal	A 156 N 8
(b) Where decree is reviewed—Limitation—Starting	
point	A 156 N 9
(c) Where ex parte decree is set aside by trial Court	
but restored by High Conrt—Limitation—Start-	A 156 N 11
(d) Where there are several decrees in same snit —	Y 100 H 11
Limitation—Starting point	A 156 N 7
(ii) Appeal, where indement is given but order is not drawn	
****	A 156 N 6
	A 156 N 2
	6, A 156 N 5
tion 4,	A 150 N 10
Limitation Act (vi) Where party against whom decree is passed dies	A 156 N 12 A 156 N 10
(vi) Where party against whom decree is passed dies	77 100 IV 10

2870 GEN	ERAL INDEX				
High Court-Appeal to-(Contd.)					
(k) T 7 . A	~ le				
\",	') and 155 and	1 Apr 157		A155 N	1
•	, wild 199 gad	1 Att. 191	•••	A155 N	
(1) Under Extradition Act—Li-	mitation	•••	• • •	A155 N	
(m) Under Land Acquisition Ac			•••	A156 N	
(n) Under Probate and Admini			•••	A 156 N	
(o) Under Succession Act—Lim		mitation	•••	A 156 N	9
Amellote insignificant of Conse	intation		1	A 100 N	J
- Appellate jurisdiction of Cases d	ecided in-Priv	y Council or		A 183 N	7
on—Application for execution of		di 00 1	;:-	A 100 M	•
Calcutta High Court Original Si		, Ch. 38—Ap	pii.	A 181 N	o
cation under—Limitation	•••	•••	•••	A 101 N	2
Chartered High Court					
(a) Award filed in, under Arbi		5 — Applicat	tion		_
for enforcement—Limitati		***	• • •	A 183 N	2
(b) Original decree of, applicati					
(1) Application for person					
P. C., whether appli	ication to enforc	e decree wit	hin		
Art. 183				A 183 N 4	Ł
(c) Original decree of, enforcem	ent of				
W Y 11 1 1 1 1	d b	y High Court	t in		
			•••	A 183 N G	j
(ecre	e of Charte	red		
High Court transmitt	ed for execution i	to mofussil Co	urt		
-Limitation	•••	•••		A 183 N 2	
(ni) Articles 182 and 183 d	listinguished	•••	• • •	A 183 N2	
(iv) Article 183, whether i				A 183 N 2	
(v) Sections 6, 7 and 8,	Limitation Act,	whether gove	ern		
Art. 183	•••	•••	• • •	A 183 N 9	
(vi) Limitation-Starting	point	A 183; A 183	3 N 2;	A 183 N 0	
(vii) Revivor of decree—Wi	nat constitutes		1		
fulli A multi-stom for outcome		hat What	is is	A 183 N 4 A 183 N 9	
			•••	A 183 M 2	
•		to wh			
decree is sent for ex-	ention or on cha	aracter of Co	urt	A 183 N 2	
which passed it				A 103 11 2	
(d) Original judgment of—Appli	cation for enforce	ment—Appli	ca.		
tion by decree holder of m	ortgage decree p	praying to a	.dd		
some persons as defendants	and to proceed	to sell proper	ty		
pursuant to decroe, whether	r application to er	nforco judgmo	nt	Λ 183 N ∮	
within Art. 183			•••	11 100	
(e) Original judgment of Enfor	coment nf-App	lication for			
(i) Application for final d	lecree in mortgag	e suit, wholi	101		
application to enfor	ce preliminary	decree With	1111	A 183 N 4	
Art. 183 (ii) Application for perso	nmde		~·		
(II) Application for person	nai decroo unut	force indepen	nt:	A 183 N 4	
O. 34, R. 6, whether (iii) Application to enforce	application to on	Chat is with			
Art. 183	o leakment ,			A 153 N 4	
, , , , , , , , , , , , , , , , , , ,		by High Cou			
	4			A 183 N 6	
				A 183 N 3	

Charles Thoma	2011
High Court—Chartered High Court—Original judgment of, eto.—(Co	ntd.) A 183 N 10
(ix) Sections 6 and 7, Limitation Act, whether govern	A 183 N 9
(x) Where applicant is legally incapacitated (f) Original jurisdiction of	A 183 N 9
(i) Basis of (ii) Whether includes insolvency jurisdiction	A 162 N 4 A 162 N 4
 (iii) Whether includes matrimonial jurisdiction (g) Original orders of Application for enforcement Application 	A 162 N 4
tion for enforcement of payment order under Companies Act. S. 164—Limitation	A 183 N 5
 (h) Original orders of—Enforcement of—Application for (i) Application to enforce order—What is, within Art. 183: 	A 183 N 4
by High Court in	A 183 N 6
(iv) Limitation—Starting point C. S. 48 A 183, A 183 N 2,	
(vi) Sections 6, 7 and 8, Limitation Act, whether govern	A 183 N 10
Art. 183 (vn) Where applicant is legally incapacitated	A 183 N 9 A 183 N 9
(1) What is —Decree absolute—Made by, decree on Original Side of High Court —Divorce suit—Limitation	A 188 N 5 A 151 N 2
Decree of	A 151 N 2
Court in exercise of appellate	A 151 N 2
(c) Decree in appellate jurisdiction—Application for enforcement of—Limitation	A 183 N 6
. (d) Decree in exercise of original jurisdiction—Appeal from— Limitation—Starting point	A 151 N 3
(e) Decree of Original Side—Appeal from—Time occupied in obtaining copy of decree, whether excluded from period of	·
limitation prescribed for such suit Definition of	A 151 N 3 A 156 N 4
Division Bench of (a) Appeal to, from order of Single Judge of High Court under	
Criminal Procedure Code—Limitation (b) Appeal to, from order of Single Judge under Criminal P. C.	A 155 N 3
S 476—Whether lies—Limitation	A 155 N 3
(a) In appellate jurisdiction—Application for enforcement of— Limitation	A 183 N 6
A 162,	A 162 N 6
(iii) Where Court reviews its indement under inherent powers—Limitation	A 162 N 5 A 162 N 2
Order of	A 151 N 2
(b) Appeal from order of High Court in exercise of appellate jurisdiction—Limitation	A 151 N 2
4	

High Court—Order of—(Contd.)	
(c) In appellate jurisdiction-Enforcement of-Application for	
-Limitation	A 183 N &
ction—Appeal from	
point	A 151 N 3
allant in gettiog order appealed	A 151 N 3
from varied and settled by Registrar, whether excluded: (e) On original side—Appeal from—Time occupied in obtaining	A 101 IV O
copy of order, whether excluded from period of limitation	
proscribed for such spit	A 151 N 3
Ordinary original civil jurisdiction of-Meaning of	A 183 N 6
Original jurisdiction of	
(a) And ordinary original civil inrisdiction of High Court-Dis-	37.0
tinguished	A 151 N 2
(b) Meaning of	A 151 N 2
Original Side of	
(a) Mortgage decree in—Application for personal decree—Limi-	A 181 N 6
tation (b) Mortgage suit—Application for final decree in—Limitatioo	A 181 N 4
-Rangoon High Court - Judgment of On Original Side-Appeal	-
from, under Letters Patent, Cl. 13-Limitation-Starting point:	A 151 N 3
-Rule making powers of If can make rules inconsistent with pro-	10
visions of Act	B3N43
Rules of-Application under, for re-admission of appeal dismissed	A 168 N 2
for want of prosecution—Limitation	A 100 11 =
Single Judge of	
(a) Judgment of - Appeal from in exercise of appellate jurisdic-	A 156 N 2
tion under Letters Patent—Limitation	21 200
(b) Order of (i) Under Criminal Procedure Codo — Appeal from to	
(i) Under Criminal Procedure Codo — Appeal from, to	A 155 N 3
(ii) Ur . from	
ios —	A 155 N 3
Limitation	A 155 N 3
(c) Whether subordinate of Division Bench	A 162 N 3
Whether has right of review in criminal cases	8 & 129 N 4
Hindu-Definition of A 15	8 & 129 N 4
Hindu — Definition of	8 & 129 N 4
Hindu-Definition of A 15	8 & 129 N 4
Hindu—Definition of A 19 —Suit by, for possession of immovable property by Hiodu entitled to	A 141 N 2
Hindu - Definition of A 14 Suit by, for possession of immovable property by Hiodu entitled to A 14	A 141 N 2 A 141 N 2 A 141 N 2
Hindu — Definition of ——Suit by, for possession of immovable property by Hiodu entitled to ———————————————————————————————————	A 141 N 2
Hindu — Definition of ——Suit by, for possession of immovable property by Hiodu entitled to ———————————————————————————————————	A 141 N 2 A 141 N 2 A 141 N 2
Hindu — Definition of A 11	A 141 N 2 A 141 N 2 A 141 N 2
Hindu — Definition of A 14 — Suit by, for possession of immovable property by Hiodu entitled to A 14 — A 14 — Hindu Law Benares School of — Widow uoder — Adoption by — Adoption without express permission of her husband — Mortgago jointly with adopted soo of proporties inherited by widow as lamited owner.— Suit by	A 141 N 2 A 141 N 2 A 141 N 2
Hindu—Definition of A 14 —Suit by, for possession of immovable property by Hiodu entitled to	A 141 N 2 A 141 N 2 A 141 N 2 ; A 141 N 2 8 & 129 N 4
Hindu—Definition of A 14 —Suit by, for possession of immovable property by Hiodu entitled to A 14 —CU	A 141 N 2 A 141 N 2 A 141 N 2 ; A 141 N 2 8 & 129 N 4
Hindu—Definition of —Suit by, for possession of immovable property by Hiodu entitled to	A 141 N 2 A 141 N 2 A 141 N 2 3 A 141 N 2 8 A 120 N 4
Hindu—Definition of A 14 —Suit by, for possession of immovable property by Hiodu entitled to A 14 —U. A 14 Hindu Law — Benares School of —Widow uoder —Adoption by—Adoption without express permission of her husband—Mortgage jointly with adopted soo of properties inherited by widow as limited owner.—Suit by reversioner for declaration that mortgage is not binding—Reversioner, whether must set aside adoption before he can obtain declaration	A 141 N 2 A 141 N 2 A 141 N 2 ; A 141 N 2 8 & 129 N 4
Hindu—Definition of —Suit by, for possession of immovable property by Hiodu entitled to	A 141 N 2 A 141 N 2 A 141 N 2 S 4 141 N 2 8 & 120 N 4 A 125 N 19 S 7 N 20
Hindu—Definition of A 14 —Suit by, for possession of immovable property by Hiodu entitled to A 14 —U. A 14 Hindu Law — Benares School of —Widow uoder —Adoption by—Adoption without express permission of her husband—Mortgage jointly with adopted soo of properties inherited by widow as limited owner.—Suit by reversioner for declaration that mortgage is not binding—Reversioner, whether must set aside adoption before he can obtain declaration	A 141 N 2 A 141 N 2 A 141 N 2 3 A 141 N 2 8 A 120 N 4

Hindu law-Join	family-(Contd.)

IZH — COME IZHMI — (COME.)	
(e) Cause of action accruing to one in his own iodividual right —S. 7, if applies	S7N4
(f) Coparceners-Ooe of them alone, if can give discharge in	
	S 7 N 16
of entire family property—Limitation (h) Goveroed by Mitaksbara Law—Aliecatico by member	A 120 N 2
(i) Remedy of another member not party to allegation (ii) Suit by another member not party to allegation to declare that alienation is not binding on him—Limi-	A 91 N 6
tation (iii) Whether must be set aside by another member not party to alienation before he can claim relief which	A 91 N 6
he wants	A 91 N 6
(i) Joint family debt realized by one member—Suit for share by other members—Limitation	A 62 N 9
(j) Manager	
(i) Oapacity to give discharge in regard to causes of action in favour of family (ii) Dobt due to family—Right to give discharge	S7N16 S7N9
(iii) Decree in favour of joint family—Manager, if can give valid discharge to indoment debtor	S 7 N 15
(iv) Liability locurred by the act of all members of the family — Whether same as liability incurred by manager on bohalf of family (v) Mention of a debt in the schedule of dobts filed by	S 21 N 20
manager in the course of proceedings for his being adjudicated an insolvent—Admission, if binds family:	S 21 N 20
 (vi) Suit for rodemption of mortgaged property—Maoager, if can give discharge on behalf of whole family (vi) Whether trustee for other members of family 	S7N18 S10N9
(k) Maoagor of, representing family in suit—Addition of other members—Whether amounts to addition of new parties within S. 22	S 22 N 11
(i) Maoager or father of—Mortgage doed executed by, oot binding oo interest of jumors or soos—Suit by mortgaged for simple moocy decree—Limitation	A 116 N 19
(l¹) Order passed agaiost manager under O. 21 R. 100, Civil P. C. — Maoager not filiog soit agaiost order within limitation— Other members also lose their right to property conceroed	A 11.A N 4
(m) Partition (i) Acknowledgment or payment by alleged manager after partition—Oreditor having no notice of partition— Acknowledgment or payment, if binding on other members	S 21 N 20
(ii) Certain boods remaining joint property—Money on bonds realized after separation—Suit by separated members to recover share of money due on bond—Limitation	A 62 N 9
-Acknowledgment or payment made by any member of the	

GENERAL INDEX	2810
Hindu law _Joint family _(Contd.)	
family in the ordinary course of business-Whether binding	
on other members of the family	S 21 N 14
(c) Suit by manager for rent due in respect of family property	
-A member of the family added after limitation as co-	
plaintiff—Subsequent addition, if entails dismissal of suit	S 22 N 5
(p) Suit by manager without stating in plaint capacity in which	
he is suing-Omission to state it within period of limita-	~ ~~ ~~ ~
tion, if bars suit	S 22 N 6
(q) Suit by member of joint family not as manager—Addition of other members—Whether amounts to addition of new	
parties within S. 22	S 22 N 11
	0 22 11 11
- Joint family business - Acknowledgment or payment by any	
member of the family made in the course of the business—Who-	
ther can be presumed to be authorized by the other members of the family	S 21 N 14
	0 21 M 14
— Joint family firm—Right of managing momber to sue in his own name without impleading other members	S 22 N 18
	0 22 N 10
—Minority and guardianship—Mother after father's death, if lawful guardian for purposes of S 21	S 21 N 3
	0 11 14 0
—Partition (a) Purchase of share of member of joint family in Court aud-	
tion—Suit for partition and for possession as consequential	
relief-Applicability of Art. 11 A	A 11 N 9
(b) Share of debt due to coparcener collected by another	
coparceper before partition - Fact kept back from bum at	
the time of partition on representation that debt was still	
outstanding—S 18, if applies	S 18 N 5
Sbebait-Minority ofExtension of time on ground of, if available	8 6 N 80
Son	
(a) Pious obligation of, to pay his father's debts—Suit for enforce-	
ment of	
(1) In respect of mortgage executed by father which is not	1 400 110
binding on son—Limitation (ii) Limitation—Starting point	A 132 N 9 A 120 N 49
6.43.45	A 120 N 49
(b) Suit against, to enforce his Hindu law hability to pay his	21 120 11 43
father's promissory note debt—Limitation	A 73 N 2
Widow	
(a) Acknowledgment or payment by Hindu widow-Whether	
binds reversioners succeeding to the estate after her	S 21 N 19
(b) Acknowledgment or payment in respect of any liability by	
or by agent of widowValidity of, as against reversioner	
succeeding to such liability	S 21
(e) Adoption by	
 After ber dispossession by stranger—Adopted son's right to sue for possession—Whether independent of 	
widow's right to sue for possession—Whether affected	
by limitation that may have run out in respect of	
such right	S 9 N 10
	2 Cl 8 N 3, 4

Hindu law-Widow-Adoption by-(Contd.)

u	lawWidowAdoption by(Contd.)	
	(iii) Suit by adopted son succeeding to estate after widow	
	—Disability of adopted son at the time of so succeed-	
	ing—Right to extension of time	S 6 N 19
	(iv) Suit to set aside, by reversioner—Extension of time on	
	ground of disability	S 6 N 17
	(d) Alienation : See Alienation	
	(e) Decree against	
		S 2 Cl 8 N 3
	(ii) Ohtained by collusion with third person	
	(a) Suit by reversioner for relief inconsistent with	1 OF 3T 0
	decree—Limitation applicable	A 95 N 8 A 95 N 8
	(b) Whether hinding on reversioner	A 141 N 13
	(iii) Whether hinding on reversionary heirs	A 141 N 10
	(f) Dispossession of Death of widow-Reversioner minor-	S 6 N 14
	Right to bring suit within three years of attaining majority: (g) Dispossession of, from possession of bushand's estate—Suit	501.2-
	for possession against etranger—Cause of action, if distinct	
	from cause of action of reversioner entitled to sue for	
	possession after ber death	89N 10
	(h) Husband desiring widow to adopt a son—Wbether imposes	
	obligation on widow to hold her husband's estate for benefit	
	of son to be adopted	S 10 N 10
	(1) If represents the estate fully for purposes of limitation	S 2 Cl 8 N 3
	(1) Minor widow—Adoption by—Adopted son succeeding to ber	
	estate, if gets fresh period of limitation from date of adop-	S 6 N 42
	tion	20 N 42
	(k) Remarriago	
	(1) Forfeiture on	
	(a) Suit upon, for possession of estate inherited by widow from husband—Suit by reversioner—	
	Limitation or reversions	A 148 N 8
	(b) Whether can be waived by reversioner	A 143 N 19
	(ii) Suit by reversioner — Suit for possession — Suit on	
	ground of remarriage of widow—Limitation	A 141 N 9
	(1) Reversioner, if derives right to sue accrued to widow from	S 2 Cl 8 N 3
	her as beir	Sacrene
	(m) Reversioner succeeding to estate of - Adverse possession	
	commencing in lifetime of last full owner-Disability at	S 6 N 19
	time of succeeding to estate, if ground for extension	-
	(n) Surrender of estato by (1) In favour of daughter—Death of daughter before mother	
	- Suit by next male reversioner for possession -	37.0
	Limitation—Starting point	A 141 N 9
	(11) To reversioner — Suit by surrenderee for possession	A 141 N 9
	—Limitation	A 141 I
	(o) Surrender of property by-Suit by surrenderee for posses-	
	sion of property alienated by widow before surrender—	A 141 N 9
	Limitation (p) Suit by, for recovery of monoy which she expends in discharge	
	of her husband's debts—Limitation	A 132 N 8
	(a) Suit by reversioner succeeding to estate after widow—Dis-	
	ability at the time of succeeding to estate — night to	S 6 N 19
	extension of time	5041

Hindu law-Widow-(Centd.)	
(r) Unchastity of Forfeiture on Suit on ground of, for posses-	A 143 N 9
sion of widow's estate by reversioner-Limitation	A 143 N 9
(s) Widow giving property to member of her family by way of settlement—Such member transferring the property—Suit	
by presumptive reversioner in respect of transfer—Limita-	
tion	A 125 N 14
(t) Widow io enjoyment of servient tenement—Exclusion of	
period in favour of reversioner-When available	S 27
(u) Widow to possession—Transfer in virtue of her powers as	
representing estate-Transferce, if a person entitled on the	S 27 N 1
determination of the interests of the widow withio S. 27	5 21 N I
Tri to the Chit The Alice	A 50
TT: 41 4 D 44 7 A 45	A 50
	A 50
— Hire of bousehold furniture—Suit for—Limitation	A 50
Hire of vehicles-Suit for-Limitation	A 50 N 1
-Sut for-Limitation-Residuary provision of	Y 90 H 1
History	Preamble N 2
	Preamble N 2
Holiday	
-Act directed to be done by decroe or order of Court-Last day for	
doing it falling on holiday-Act to be done, if can be done on re-	84 N 5
opeoing day	54 N 0
——Amount to be paid 10to Court by certain date—Such date coming in Court vacation—Payment on re-opening day, sufficiency of	S4N2FN6
io Conrt vacatioo—Payment on re-opeolog day, sufficiency of —Application to set aside sale—Period prescribed expiring on boliday	84N2FN6
io Conrt vacatioo—Payment on re-opeolog day, sufficieocy of —Application to set aside sale—Period prescribed expiring on boliday —Pressolation oo re-opening day—Sufficiency of	S4N2FN6
io Conrt vacatico—Payment on re-opcolog day, sufficiency of Application to set aside sale—Period prescribed expiring on boliday —Prescotation on re-opening day—Sufficiency of Court closed	84 N 2 F N 6 8 4 N 4
io Conrt vacatico—Payment on re-opeoiog day, sufficiency of Application to set aside sale—Period presented expiring on boliday —Presentation on re-opening day—Sufficiency of —Court closed (a) Bombay High Court, Original Side, if closed during summer	S4N2FN6 S4N4
io Contrasatioo—Payment on re-opcoing day, sufficiency of —Application to set aside sale—Period prescribed expiring on boliday —Presentation on re-opening day—Sufficiency of —Court closed (a) Bombay High Court, Original Side, if closed during summer vacatioo	S4N2FN6 S4N4 S4N12
io Contrasatioo—Payment on re-opcoing day, sufficiency of —Application to set aside sale—Period prescribed expiring on boliday. —Presentation on re-opening day—Sufficiency of —Gourt closed (a) Bombay Higb Court, Original Side, if closed during summer vacatioo (b) Court adjourned for recess but office open twice a week for receiving papers—Court, if closed	S4N2FN6 S4N4 S4N12 S4N12
io Conrt vacatico—Payment on re-opcoing day, sufficiency of Application to set a saide saide—Period preserving on boliday —Prespotation on re-opening day—Sufficiency of —Court closed (a) Bombay High Court, Original Side, if closed during summer vacation . (b) Court adjourned for recess but office open twice a week for receiving papers—Court, if closed (c) Facilities for deposit oof given on day in question though	S4N2FN6 S4N4 S4N12 S4N12
io Contravactico—Payment on re-opcoing day, sufficiency of Application to set aside sale—Period preseribed expiring on boliday —Presentation on re-opening day—Sufficiency of Gourt closed (a) Bombay High Court, Original Side, if closed during summer vacation (b) Court adjourned for recess but office open twice a week for receiving papers—Court, if closed (c) Facilities for deposit oot given on day in question though Court open—Court, if to be considered closed oo that day	S4N2FN6 S4N4 S4N12 S4N12 S4N12
io Contravactico—Payment on re-opeoiog day, sufficiency of Application to set a saide saide—Period preservind oxpiring on boliday—Presentation on re-opening day—Sufficiency of Court closed (a) Bombay High Court, Original Side, if closed during summer vacation . (b) Court adjourned for recess but office open twice a week for receiving papers—Court, if closed (c) Facilities for deposit oot given on day in question though Court opeo—Court, if to be considered closed oo that day (d) Gazetted holiday — Judge poliding Court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court—Court, if closed (e) Facilities for the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the court of the cour	S4N2FN6 S4N4 S4N12 S4N12 S4N12
io Contravactico—Payment on re-opcoing day, sufficiency of Application to set aside sale—Period preseribed expiring on boliday —Presentation on re-opening day—Sufficiency of Gourt closed (a) Bombay High Court, Original Side, if closed during summer vacation (b) Court adjourned for recess but office open twice a week for receiving papers—Court, if closed (c) Facilities for deposit oot given on day in question though Court open—Court, if to be considered closed oo that day	S4N2FN6 S4N4 S4N12 S4N12 S4N12
io Contracatioo—Payment on re-opcoing day, sufficiency of Application to set aside sale—Period preseribed expiring on boliday —Presentation on re-opening day—Sufficiency of Court closed (a) Bombay High Court, Original Side, if closed during summer vacation (b) Court adjourned for recess but office open twice a week for receiving papers—Court, if closed (c) Facilities for deposit oot given on day in question though Court open—Court, if to be considered closed oo that day (d) Gazetted holiday — Judge bioling Court—Court, if closed (e) Notification providing for receiving plants on certain days—Court, if closed (f) Office of Court oppe during vacation for purpose of parti-	S 4 N 2 F N 6 S 4 N 4 S 4 N 12 S 4 N 12 S 4 N 12 S 4 N 12 S 4 N 12
io Contravactico—Payment on re-openic day, sufficiency of Application to set a saide sale—Period prescribed expiring on boliday—Prescotation on re-opening day—Sufficiency of Court closed (a) Bombay High Court, Original Side, if closed during summer vacation . (b) Court adjourned for recess but office open twice a week for receiving papers—Court, if closed (c) Facilities for deposit oof given on day in question though Court open—Court, if to be considered closed oo that day ald Gazetted holday — Judge holding Court—Court, if closed (c) Notification providing for receiving plaints on certain days—Court, if closed (f) Office of Court open during vacation for purpose of particular business in question—Court, if closed	S 4 N 2 F N 6 S 4 N 12 S 4 N 12 S 4 N 12 S 4 N 12 S 4 N 12 S 4 N 12
io Contracatioo—Payment on re-opcoing day, sufficiency of Application to set aside sale—Period preseribed expiring on boliday —Presentation on re-opening day—Sufficiency of Court closed (a) Bombay High Court, Original Side, if closed during summer vacation . (b) Court adjourned for recess but office open twice a week for receiving papers—Court, if closed (c) Facilities for deposit oot given on day in question though Court open—Court, if to be considered closed oo that day (d) Gazetted holiday — Judge holding Court—Court, if closed (e) Notification providing for receiving plants on certain days—Court, if closed (f) Office of Court open during vacation for purpose of particular business in question—Court, if closed (g) Officer authorized to receive plants merely absent from	S 4 N 2 F N 6 S 4 N 4 S 4 N 12 S 4 N 12 S 4 N 12 S 4 N 12 S 4 N 12
io Contracatioo—Payment on re-opcoing day, sufficiency of Application to set aside sale—Period preseribed expiring on boliday —Presentation on re-opening day—Sufficiency of Court closed (a) Bombay High Court, Original Side, if closed during summer vacation (b) Court adjourned for recess but office open twice a week for receiving papers—Court, if closed (c) Escilities for deposit oot given on day in question though Court open—Court, if to be considered closed oo that day (d) Gazetted holiday — Judgo bolding Court—Court, if closed (e) Notification providing for receiving plaints on certain days—Court, if closed (f) Office of Court open during vacation for purpose of particular business in question—Court, if closed (g) Officer authorized to receive plaints merely absent from headquarters—Court, if closed	S4N2FN6 S4N4 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12
io Contravactico—Payment on re-openic day, sufficiency of Application to set a saide sale—Period prescribed expiring on boliday—Prescotation on re-opening day—Sufficiency of Court closed (a) Bombay High Court, Original Side, if closed during summer vacation . (b) Court adjourned for recess but office open twice a week for receiving papers—Court, if closed (c) Facilities for deposit oot given on day in question though Court open—Court, if to be considered closed oo that day ald Gazetted holday — Judge loolding Court—Court, if closed (c) Notification providing for receiving plaints on certain days—Court, if closed (f) Office of Court open during vacation for purpose of particular business in question—Court, if closed (g) Officer authorized to receive plaints merely absent from headquarters—Court, if closed	S4N2FN6 S4N4 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12
io Contracatioo—Payment on re-opeoiog day, sufficiency of Application to set aside sale—Period preserbed expiring on boliday —Presentation on re-opening day—Sufficiency of Court closed (a) Bombay High Court, Original Side, if closed during summer vacation (b) Court adjourned for recess but office open twice a week for receiving papers—Court, if closed (c) Facilities for deposit oot given on day in question though Court opeo—Court, if to be considered closed oo that day (d) Gazetted boliday — Judge holding Court—Court, if closed (e) Notification providing for receiving plants on certain days— Court, if closed (f) Office of Court opeo during vacation for purpose of particular business in question—Court, if closed (g) Officer authorized to receive plants merely absent from headquarters—Court, if closed	S4N2FN6 S4N1 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12
io Contravactico—Payment on re-openic day, sufficiency of Application to set aside sale—Period prescribed expiring on boliday —Presentation oo re-opening day—Sufficiency of —Court closed (a) Bombay High Court, Original Side, if closed during summer vacatioo . (b) Court adjourned for recess but office open twico a week for receiving papers—Court, if closed .(c) Facilities for deposit oot given on day in question though Court opeo—Court, if to be considered closed oo that day a) Gaestede holday — Judgo holding Court—Court, if closed .(c) Notification providing for receiving plaints on certain days— Court, if closed .(f) Office of Court opeo during vacation for purpose of parti- cular business in question—Court, if closed .(g) Officer authorized to receive plaints merely absent from headquaters—Court, if closed	S4N2FN6 S4N4 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12
io Contracatioo—Payment on re-opeoiog day, sufficiency of Application to set a sale sale—Period preservised oxpiring on boliday —Presentation on re-opening day—Sufficiency of —Court closed (a) Bombay High Court, Original Side, if closed during summer vacatioo (b) Court adjourned for recess but office open twice a week for receiving papers—Court, if closed (c) Facilities for deposit oot given on day in question though Court opeo—Court, if to be considered closed oo that day (d) Gazetted holiday — Judge bolding Court—Court, if closed (e) Notification providing for receiving plants on certain days— Court, if closed (f) Office of Court opeo during vacation for purpose of particular business in question—Court, if closed (g) Officer authorized to receive plants merely absent from headquarters—Court, if closed (h) Presented —Court, it closed —Court closing immediately decree is passed—Copies applied for or	S4N2FN6 S4N4 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12
io Contracatioo—Payment on re-opeolog day, sufficiency of Application to set aside sale—Period preseribed expiring on boliday —Presentation on re-opening day—Sufficiency of —Court closed (a) Bombay High Court, Original Side, if closed during summer vacation (b) Court adjourned for recess but office open twice a week for receiving papers—Court, if closed (c) Facilities for deposit oof given on day in question though Court open—Court, if to be considered closed oo that day (d) Gazetted holiday — Judge holding Court—Court, if closed (e) Notification providing for receiving plants on certain days— Court, if closed (f) Office of Court open during vacation for purpose of parti- cular business in question—Court, if closed (g) Officer authorized to receive plants merely absent from headquarters—Court, if closed (h) Practical Court open during vacation for purpose of parti- cular business in question—Court, if closed (h) Practical Court open during vacation for purpose of parti- cular business in question—Court, if closed —Court til closed —Court til closed —Court it closed — —Court closing immediately decree is passed—Copies applied for on re-opening day — Appeal preferred oo date of obtaining copies—	S4N 2 FN 6 S4N 12 S4N 12 S4N 12 S4N 12 S4N 12 S4N 12 S4N 12 S4N 12
io Contracatioo—Payment on re-opeoiog day, sufficiency of Application to set a sale sale—Period preservised oxpiring on boliday —Presentation on re-opening day—Sufficiency of —Court closed (a) Bombay High Court, Original Side, if closed during summer vacatioo (b) Court adjourned for recess but office open twice a week for receiving papers—Court, if closed (c) Facilities for deposit oot given on day in question though Court opeo—Court, if to be considered closed oo that day (d) Gazetted holiday — Judge bolding Court—Court, if closed (e) Notification providing for receiving plants on certain days— Court, if closed (f) Office of Court opeo during vacation for purpose of particular business in question—Court, if closed (g) Officer authorized to receive plants merely absent from headquarters—Court, if closed (h) Presented —Court, it closed —Court closing immediately decree is passed—Copies applied for or	S4N2FN6 S4N4 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12 S4N12

Hollday (Contd)

Hollday—(Contd.)	
- Extended period computed with reference to provisions of Act,	
expiring on holiday - Proceeding, if can be taken on re-opening	S 4 N
day	54 N
tion—Computation of limitation for appeal, etc	S 12 N 24
Joint operation of Ss. 4 and 14	S 14 N 7
-Judgment pronounced on - Exclusion of day in computing period	
of limitation for appeal, etc	S 12 N 6
-Last day not holiday-Timo, if will be extended because the next	
	34N7FN1
-Legal disability - Person becoming entitled to sue on holiday-	S 4 N 9
Suit, if can be instituted on rn-opening day Limitation expiring on	D 1 11 0
(a) Institution on re-opening day—Principle of S. 4, if concerns	
computing of proscribed period of limitation	S4N2
(b) Plaint presented on ro-opening day - Fact of Court having	
been closed, if should be montioned in plaint	54 N 16
(c) Proceeding, if may be instituted on re-opening day	S 4
- Limitation expiring when Court closed - Court not sitting on re-	
opening day - Suit filed on day that Court actually re-opened, if	84 N 12
in time	D 2 21 22
apart for motion under rules of practice, after re-opening — Suffi-	
ciency of	S 4 N 15
- Limitation prescribed by S. 48 or O. 45, R. 7, Civil P. C., expiring	
on-Presentation on re-opening day-Sufficiency of	S 4 N 3
-Payment to be made under private agreement between parties-	84N6
Period expiring on holiday — If can be made on re-opening day:	54110
— Period after adding personal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation of appeal or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sentation or sent	84 N 10
—Period allowed by S. 3	
taken on re-opening day	54N 11
-Proper Court open on expiry of limitation - Suit filed in wrong	84 N 13
Court on re-opening day—Effect	8 4 W 10
- Review, court-fee for Ninotioth day falling an boliday - Presen-	S 4 N 63
tation on ro-opening day—Court-fee payable	D 11.
— Tender of deposit on last date — Court unable to receive it though Court not closed—If can be received next day	S4N4
Court not closed—If can be received next day	
Hundl-See Bill of exchange.	
Hnsband and wife	
—Husband or wife, if can acknowledge dobts of the other	S 19 N 63
- Refusal of conjugal rights - Whether a continuing wrong	8 23 N 15
- Right to society of his nr her sponse Breach of abligation Time,	
if begins to run at overy moment of the time during which the	11 15
society is withheld	S 23 N 15
Idlot	
— Disability, of — Person enti: sue, an idiot at com- moccome ion—Disability, n	86N 29
mcoceme ion—Disability n	

Immovable property			
- Charge upon - Enforcement of - Suit for - Suit to enforce ind	em-		
nity charged upon immovable property—Limitation	•••	A 83	3 N 6
Definition of	•••	A 132	N 19
Immovable property mortgaged			
(a) Suit by mortgagee for possession—Limitation—Applicab	ility		
of Art 135 and Art. 146 to such snit	•••	A 146	3 N 2
(b) Suit by mortgagee for possession before Court established	l by		
Royal Charter-Limitation-Starting point	•••	A 146	
Interest charged upon-Suit for-Lamitation	•••	A 68	3 N 4
-Interest in			
(a) Suit for possession—Limitation (b) What is	A 142	& 144	: N 7
(1) Easement—Whether interest in immovable proper	+		
(1) Maschiest — 11 seeded interest in manifestate proper		& 144	N 7
(n) Equity of redemption.—Whether interest in imme			
hle property		& 144	
		& 144	
Y Y D Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take and Take a		& 144	
(v) Right to collect assessment		å 144	
		& 144	NY
(vu) Right to possession and management of saran;		& 144	N 7
(viii) Right to watercourse		& 144	
(ix) Within Art. 144		& 144	
- Joint property - Whether belongs to each co-owner against to	res.		
passer within Art. 109		A 109	N 15
Meaning of A 15 N 1, A 39 N 10, A 109 N 14,	A 142	& 144	N 6
-Mortgage of-Interest of - Whether immovable property wit	hin		
Art 141	/	A 141 1	N 11
Possession of			
(a) Whether includes possession of column of space above surf ad infinitum	ace	A 39	N7 0
(b) Whether includes possession of underlying strata also	•••	A 39	
-Profits of-Meaning of		1 109 1	
-Purchase of-Whether 'particular business' within Art, 84		A 84	
		å 144	
-Suit for possession of			- 0
(a) Immoveble property ettached to office — Suit whather has	red		
if right to possession of office is harred.	A	124 1	
I to such su:		A 146	
moute of all		A 141	N 3
tive mother—Limitation		A 141	N 7
(e) Suit by son adopted by last male owner for his property	···	21 111	
Limitation		A 141	N 7
(f) Suit by heir of Hindu or Mahomedan female who is	iull		
owner of property—Limitation	•••	A 141	N 5
(g) Suit by Hindu or Mahomedan entitled to possession death of Hindu or Mahomedan female	on		
(i) Cause of action—When accines		A 141	0.74
(ii) Essentials of—Applicability of Art. 141		A 141	
• • • • •			

2880 GENERAL INDEX	
Immovable property—Suit for possession of—Sult by Hindu, etc.—(Contd.)	
(iii) Female io possession not as heir but in some other	
way—Limitation A 141 N 4	
(iv) Limitation—Starting point A 141; A 141 N 2	1
(v) Plaintiff not becoming entitled to possession immediately on death of female—Limitation A 141 N 6	•
(vi) Who can bring such suit under Art. 141 A 141; A 141 N 4	
(n) Suit by person in possession without title against trespasser—	
Suit, whether barred if not brought within six mooths under	
Art. 3 A 3 N 5	,
(i) Suit by tracsferee from Hiodu or Mahomedan who is entitled	
to possession on death of Hindu or Mahomedan female—	
Limitation-Starting point A 141 N 8	i
(1) Suit on basis of title—Failure to prove title—Decree, if can	
be given subsequently under Specific Relief Act, S. 9 A 3 N 6	
(k) Suit under Specifio Relief Act, S. 9	
(1) Limitation A 3	
(ii) Whether maintainable where defendant is maintained in presession by order under S. 145. Criminal P. C A 3 N 7	
in possession by order under of 2x0, original 2.	
—Trespass upon—See under Trespass.	
(c) Degree on mortgage whother immerable property A 132 N 19	
(ci) Group of making these	
(d) Growing crops, whether immovable property A 55 N 1	
(e) House built on site with foundation laid in it whether, immovable property A 132 N 19	
(f) Incorporeal right, whether immovable preperty under	
(d) Legis income whether immercials averages: A 142 £ 144 N 6: A 132 N 19	
(g') Materials of standing house A 142 & 144 N 6	
(b) Office of will are Took! in Dombon Descidence whether immed	
vable property A 109 N 14	
(1) Right of fishing, whether immovable property within Speci.	
(a) Michael Mary 11 31 3 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	
whether immovable property within Art. 132 A 132 N 19	
immovable property within Art. 109 A 109 H 20	
(1) Right of usufructuary mortgageo to possession of mortgaged property, whother improvable property within Art 109: A 109 N 15	
(-) m	
(m1) Right to birt offerings A 149 k 141 h 6	
(m²) Right to hereditary office A 142 a 141 a 3 N 4	
(n) Right to hereditary office (n) Right to palkar, whether interest in immovable property A 3 N 4 A 142 X 144 N 5	
1. * A 149 & 144 A *	
A 145 N 21	
cercomonies A 142 & 144 % 6	
(p) Right to turn of worship, whether immovable property A 132 N 13	

GEGERALI INDEX	200I
Immoveable property.—What is.—(Contd.) (q) Simple mortgage right in immovable property, whether immovable property (r) Standing trees, whether immovable property A 55 N 1, 3 14	A 132 N 19 A 132 N 19; 2 & 144 N 6
(s) Toda gırashak upon inam villago and right to recover arrears due in respect of that haq, whether interest in immovable property within Specific Relief Act, S. 9	A 3 N 4
(t) Usufructuary mortgage right in property, whether immovable property	A 132 N 19
	12 & 144 N 6 12 & 144 N 6
templo	12 & 144 N 6 12 & 144 N 6 12 & 144 N 6
(8)	12 & 144 N 6
Imprisonment, false—See False imprisonment.	
Income-Tax Act	
	5 N 4 F N 8
S. 66 (3)—Application under—Time spent in obtaining copies of order passed under S. 66, sub-s. 2, whether can be deducted for computing limitation for application S 12 N 5, S 12	N 3 F N 3a
Incumbrance	
	A 120 N 5
	A 121 N 6
(b) Burden of proof that incumbrances were created subsequent to creation of estate or tenure sold, on whom lies (c) Incumbrances, whether must be created subsequent to crea.	A 121 N 2
tion of estates or tenure sold for maintainability of suit — (d) In what way effected, where under Provincial Rent and	A 121 N 2
Revenue Act such incumbrances are voidable at the option of purchaser	
	A 121 N 1
(e) Suit for—Limitation—Starting point A 121, A 121 N : (i) Suit, il necessary where under ensetments such sales render	1, A 121 N 5
(i) Suit, il necessary where under enactments such sales render incumbrances void	
(I) Suit, if necessary where under enactments such sales render incumbranes void Meaning of Property subject to Sale of Transaction, whether contains implied contract of indemnity by vendee in favour of vender against	A 121 N 5 A 121 N 1 A 121 N 2
(I) Suit, it necessary where under anactments such sales render incumbrances void Meaning of	1, A 121 N 5 A 121 N 1
(I) Stat, it necessary where under enactments such sales render incumbrances void Meaning of	A 121 N 5 A 121 N 1 A 121 N 2 A 83 N 7 A 130 N 6 A 121 N 2
(I) Suit, it necessary where under anactments such sales render incumbrances void Meaning of	A 121 N 5 A 121 N 1 A 121 N 2 A 83 N 7 A 130 N 6

Incumbrance—What is—(Contd.)	
(d) Mero possession of tonant however long, whether incum.	
brance	A 121 N 2
(e) Mortgage on lands, whether incumbrance	A 121 N 2
(f) Perpetual allowance charged nn land, whether incumbrance:	A 121 N 2
(g) Under tenure, whether incombrance	A 121 N 3
Indomnity	
—Claim to—When can be sot off	A 83 N 14
Contract of .	
(a) Assignment of lease, whether contains implied indemnity	
contract on part ni assignee to indomnily assignor in res-	
pect of covenants in lease	A 83 N 8
(b) Breach of Compensation for Suit for Limitation	A 65 N 4
(c) Contract of indemnity implied in accommodation bill—Suit	A 79 N 2
(d) Covenant for quiet possession, whether indemnity contract:	A 83 N 7
(e) Covenant for title, whether indemnity contract	A 83 N 7
(i) Meaning of	A 83 N 2
(g) Money left in hands of vendoo to pay off vendor's debt-	
Express contract of indemnity against loss caused by failure	
to pay-Suit upon such contract-Limitation	A 83 N 7
(h) Registered indemnity contract—Suit upon—Limitation	A 83 N 5
(i) Remedy of person indemnified in an indemnity contract	
before be is actually demnified	A 83 N 13
(1) Salo of property subject to incumbrances—Transaction, whe-	
ther contains implied contract of indemnity by vendes in	A 83 N 7
favour of vendor against incumbrances	2 00 11
(k) Suit by egent against principal to enforce obligation under S. 222, Contract Act—Limitation	A 83 N 4
(1) Suit by promisor against point promisor for contribution—	
Limitation	A 83 N 11
(m) Suit by vendor against vendee for vendee'e failure to pay	-
vendor's debt as contracted and for which purchase money	
has been left in vendee'e hands-Suit on implied contract	
of indemnity-Limitation-Starting point	A 83 N 7
(n) Suit for breach of covenant for quiet possession-Limitation	
applicable, whether same as applicable to cuit on indemnity	A 83 N 7
contract (o) Suit for breach of covenant for title—Limitation applicable,	
whether same as applicable to suit on indemnity contract:	A 83 N 7
(p) Suit for indemnity based not on any promise actually made	
but on promise implied in law-Limitation	A 82 N 2
(q) Suit on—Limitation	A 83
(i) Residuary provision	A 4 03 N I
(i) Residuary provision A 79 N	A 83 N 12
property	
projects,—	A 83 N 56
(s) Suit to enforce obligation under Contract Act, Ss. 69 and 70	
Limitation	A 83 N 3
(t) Suit upon express indomnity contract against loss of quiet	A 83 N 7
possession—Limitation	
(u) Suit upon express indemnity contract against loss of title-	A 83 N 7
Limitation	

Indemnity-Contract of-(Contd.)	
(v) Suit upon express registered indemnity contract against loss	
of quiet possession—Lumitation	A 83 N 7
(w) Suit upon express registered indomnity contract against loss	
of title—Limitation	A 83 N 7
(x) Whether exists between executants of joint promissory note	A 83 N 11
Covenant for Covenant in favour of party to an award	4 00 37 75
Whether enures for benefit of all persons claiming under him Right of Suit based on right of indemnity which surety has	A 83 N 15
against principal debtor by virtue of contract of suretyship—	
Limitation	A 81 N 2
Inherent power of Court	
Exercise of	
(a) If governed by any period of limitation	S 3 N 28
(b) Undue delay in invoking-Court, if can refuse to overcise	S 3 N 28
(c) When definite remedy provided—If proper	S3N28
Extension of time under	
(a) Court, whether can extend time by inherent power for	
application for setting aside dismissal for default	A 163 N 12
(b) Court, whether can extend time under inherent powers for	A 164 N 9
application for setting aside ex parto decree	A 166 N 15
Injunction	Y 100 M 10
Compensation for wrongfully obtaining—See under Compensation.	
	4 40 37 4
Interlocutory injunction-When dissolved	A 42 N 4
	4 00 27 0
to watercourse—Suit for—Limitation	A 38 N 2 A 42 N 1
Order of injunction issued against a person restraining him from	M 42 M I
building a wall—Such person building up the wall in breach of	
order, whether amounts to a cootinging wrong	S 23 N 18
Permanent injunction	
(a) Obtaining of, by institution of suit—Whether actionable	A 42 N 2
(b) Obtaining of, whether wrongful	A 42 N 3
Stay of proceedings by iojunction—Time during which proceedings	
are stayed to be excluded	S 15
Suit for	
(a) For removal of beams put by defendant against plaintiff's	A 120 N 10
(b) For restraining defendant from obstructing plaintiff in the	N 150 M 10
enjoyment of his office — Limitation applicable, whether	
ession of office	A 124 N 5
uary Art. 120	A 120 N 10
· specific Articles, such as	-
/ \m	A 120 N 10
(e) To restrain lessee from interfering with lessor's right under	
covenant in lease to enter upon land domised and to cut and take away certain trees—Limitation	A 120 N 10
—Suit for injunction restraining defendant from entering property	A 120 N 10
—Subsequent application for execution of balance of decree	
amount against same property is for a different relief	S 14 N 19
——Temporary injunction	
(a) Obtaining maliciously of—Whether actionable	A 42 N 2

2001 GENERAL INDEX	
Injunction—Temporary injunction—(Contd.)	
(b) Period during which temporary injunction remains in force What is — Prohibitory order under Civil P. C., O. 21, R. 46, whe	A 43 N
ther injunction within Art. 42	A 42 N 1
Injury	
——Compensation for : See under Compensation.	
Insane person	
Property transferred by, during insanity-Suit to recover-Limita-	A 91
Insanity	
Extension of time on ground of : See Logal disability.	
—Lunatic, death of, after commencement of adverse possession against him—Widow—Failme to sue within three years—Rever- sioner succeeding to estate, if entitled to fresh start from widow's	
death	S 6 N 42
—Meaning of	5 6 N 27
Two persons jointly entitled to suo Noither under disability at	
commencement of limitation—Subsequent insulty of one— Effect of	S7N7
Insolvency Acknowledgment of debt by its inclusion in schedule of creditors	
filed by insolvent—Sufficiency of, for purposes of S. 19 —Application by creditor to have dobtor adjudged an insolvent —	S 19 N 47
Whether on the same cause of action as subsequent suit by him	S 14 N 18
for decree on debt	P 14 1/ 10
Creditor getting leave of Court, whother can proceed against	S 15 N 8
fling proof of claim — pendency of insolvency	
proceedings-Whother can be deducted	S 14 N 11
- Insolvency Court actually passing order amounting to injunction	S 15 N 8
or stay—S. 15 will apply	2 12 10
(a) Whether included in original jurisdiction of Chartered High	A 163 N 4
(b) Whether included in original jurisdiction of High Court	A 151 N 2
Insolvency of person, if operates as bar to proceeding against him	
personally in absence of printectinn order	S 15 N 8
Insolvency of plaintiff Whother causes abatement of suit	A 172 N 3
Insolvency proceeding_Salo in_Setting aside_Application for	A 166 N 9
- Order of adjudication annulled under S. 37, Provincial Insolvency	
Act-Appointed of insolvent's property placed in charge of pro-	S 20 N 18
perty—Appointed, if agent of insolvent within S. 20 Pendency of insolvency proceedings—Prevention of suit or appli-	B 20 0
cation being filed against him is not by reason of order of Court	- ** 0
but under the law	S 15 N 8
- Refusal of leave to creditor - Whether amounts to order granting	S 15 N 8
Suit against debtor after termination of insolvency — Previous ac-	., 10 -
Lnowledgment by Official Assignee.—Whether can be relied on as	
saving limitation	S 19 N 53

Insolvency—(Contd)	
——Sunt against Official Assigned to enforce mortgage executed by insolvent—Acknowledgment made by Official Assigned may be	
relied on as saving limitation — Suit by assignee from Official Receiver of claims to damages in favour of insolvent — Objection that claim not being assignable,	S 19 N 53
plaintiff had no right to sue - Official Receiver pro forma defen-	S 22 N 29
S impleaded	
within S. 22 —Time taken by creditor in filing a proof of claim in the Insolvency	8 22 N 6
Court—Whether can be excluded an computing limitation for suit by him on claim after annulment of adjudication	8 14 N 12
Insolvency Act	
Application under, to record adjustment or payment of decree out of Court-Limitation	A 174 N 2
Insolvency proceedings	
Application by creditor to be brought on schedule of creditors, if governed by any period of limitation. Debt not barred on dato of adjudication—If provable when barred	8 3 N 30
or date of proof —Period of pendency of, against a person—If can be deducted in cal-	8 3 N 30
colating period of limitation for suits by or against him	S 3 N 30
Insolvent	
Defendant becoming insolvent-Procedure as to case of	A 172 N 2
Instalment	
——Decree, payable in See under Decree. (a) Execution of See Execution	
—Monoy payable in instalments — Verbal contract for — Suit on —	
Limitation	A 75 N 3
Instalment Bond-See under Bond-Instalment bond.	
Instrument—Sec also Document	
— Foreign instrument — Meaning of	A 77 N 1
Inland instrument—Meaning ofInstrument of conditional sale—Interest upon—Whether allowable	A 77 N 1 A 63 N 1
Instrument of conditional sale—Interest upon—Whether allowable	A 03 N I
Clause in policy that if no suit is instituted within a particular	
period after rejection of claim by company all rights shall be	
forfeited-Validity	S3N21
Insurance contract providing that lapse of six months after loss	
without suit or action is conclusive evidence against validity of any claim in respect of the loss—Month must be taken to be	
lunar month of 28 days	S 25 N 1
Insurance policy	
——Suit upon	
(a) Sum assured payable after a certain time after loss or death	1 00 N 0
is proved—Limitation	A 86 N 2
loss is given to or received by insurers-Limitation-Start-	
ing point A 86; A 86 N 1	, A 86 N´3

Interest	*3*
Charged upon mortgaged property-Payment	of Suit for - Suit.
whether one for payment of money charged	
property within Art. 132	A 132 N 1
——Claimed as damages—Suit for—Limitation	· A 132 N 1
Due on contract of mortgageWhether charge	
In mortgago suit-Personal decreo for interes	
before suit—Whether can be passed although	claim for personal
relief as to principal is barred	A 116 N 2
Meaning of	A 63 N
—On money doposited—Suit for—Limitation	' A 60 N
Over usufructuary mortgage Snit by usufructu	iary mortgagee who
has leased back mortgaged property to mortga	gor himself-Limi
tation	A 110 N
-Payment of	
(a) As such on debt or legacy before expire	ation of prescribed
period-Starting point, if postponed	S 2
(b) During vacation—Effect	S4N
- Right to-When arises under substantive law	A 6
- Snit for	
(a) Advances of money by purchaser to selle	
tract to supply goods by sellor-Purchas	er bringing suit to
recover deposit with interest-Interest	
date of breach of contract, whether can I	
(b) Against co-mortgagor for interest for	A 115 N 1
redemption—Limitation applicable (c) Based on independent contract to pay it—	*** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** *** ***
(d) For recovery of interest from holder of G	one enmant promis.
sory notes—Limitation	A 120 N 2
(e) Interest alone-Whether maintainable	A 63 N 2
(f) Interest charged upon immovable property	Limitation A 63 N 4
(g) Interest claimed as accessory to principal	amount alaimed
Limitation	tion A 63 N I
(h) Interest on deposit on tharanai-Limita	
(1) Interest payable annually and principal to	certain number of
years—Suit for interest, whether barred	
date of default (1) Interest payable under independent con-	to at also and more
property—Limitation	A 63 N I
(k) Interest recoverable under registered cont	ract-Limitation: A 63 N 3
(1) Lamitation	A 50 N 41 A 05
(m) Limitation—Starting point	A 63 N 5
(n) Suit for principal barred-Suit for intere	st, whether harred A 132 N 12
where interest is accessory to principal	
(o) Suit for principal not barred-Suit for	
than 12 years before suit, whether barred	
(p) Whether barred if sout for principal is bar	A 63 N 1
-Upon deed of conditional sale-Whether allowal	4 63 A 4
- Upon hypothecation bond-Whether allowable	MG A 63 N 1
International law	
-Les locs contractus	S 11 N 1

GENERAL	INDEX		2887
Interpretation of Statutes			
	trued as	having 1	
implication	•••	• • •	Preamble N 7 F N 1
	•••	•••	Preamble N 7 F N 16 Preamble N 7
Construction of part Comparison w	ath athor	marta il	Freamole N
	itii uther	parts, 11	Preamble N 7 F N 16
Court, function of, is to say what Legisl	ature has	said it m	
- Directory or mandatory nature of provis	inns—Tes	sts	Preamble N 7
-Ejusdem generis rule, applicability of		•••	Preamble N 7
English and American law, if binding no	a Indian C	Courts	Preamble N 16
-Exceptions, if can be grafted on to section	universa	l in terms	
	•••	•••	Preamble N 7
Harmonious construction	•••		Preamble N 20
Harmonious construction, necessity of	• • •	***	Preamble N 7
Illustrations, relevancy of, in construction	on		Preamble N 12
'Includes', meaning of	•••	•••	Preamble N 7 F N 1
Intention of Legislature, what is			Preamble N 7 F N 1
- Intention to be gathered from language			Preamble N 7
- Judicial precedents, value of		• •	Preamble N 15
Language ambiguous			
(a) Extraneous considerations, relevan	cy of, in o	constructi	on Preamble N 7
(b) Other statutes in pari materia, if o			Preamble N 7
(c) Previous state of the law, if can b			Preamble N 8
(d) Scope and intention of enactment,	it can be	considere	d Preamble N 7
Language clear			
(a) Analogy of other enactments, relevant (b) Extraneous considerations, relevant		in constru	Preamble N 7
(c) Giving effect to words leading to a		Tiffoot o	
(d) Hardship, relevancy of, in construc		-1111000	Preamble N 7
(e) Intention of the law, relevancy of		uction	Preamble N 7
(f) Policy of law, relevancy of, in con			Preamble N 7
(g) Previous state of law, relevancy in			Preamble N 7
(h) Terms against general principles o	flaw nie	quity, effi	
Legislative proceedings, reference to	•••		. Preamble N 9
Marginal notes to Sections, reference to		• • •	Preamble N 11
Plain meaning, if can be controlled b	y conside	erations o	
venience	•••	• •	Preamble N 7 F N 7
-Policy of Act-Court, if concerned with		• •	Preamble N 7 F N 1
Practice of Court not to nullify express of	enactment	•••	Preamble N 7 F N 2
——Preamble (a) If controls provisions of statute			Describbe N 4
(b) Object of	•		Preamble N 1 Preamble N 1
-Preamble and Headings, reference to			Preamble N 10
Pre-existing law, relevancy in constructi	ion		· Preamble N 8
Proviso, if extends substantive portion	•••		Preamble N 14
Punctuation marks, if can be relied on			Preamble N 13
Reasonableness of provision, when mater	rıal		Preamble N 7 F N 2
Retrospective operation	•••	•••	Preamble N 26
Special provision will prevail over the ge	eneral A	75 N 2;	A 95 N 2; A 96 N 2;
			A 145 N 4

Interpretation of Statutes—(Contd.)	
-Statute creating a right and providing a remedy that remedy and	
ne other is available A 6 N	4
Statute not clear	
(a) Absurd result, injustice, defeating of its object to be avoided: Preamble N	7
(b) Reasonable construction Preamble N	7
-Strict construction-Words operating in derogation of rights of	_
subject Preamble N	
—Technical terms, construction of Preamble N 19	s
—Two constructions possible—Literal construction, if should prevail: Preamble N 7 F N 15	
	,
Two coostructions possible, which should prevail Preamble N ? Two remedies provided—Construction Preamble N ?	'n
Wanta and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Line and Li	à
W- 3 - 1	i
Intestate	:
-Estate governed by Indian Succession Act-Remedy of heirs A 123 N 4	
- Property of Suit for share of	
(a) Against administrator—Limitation A 123 N 2	
(b) Against executor—Limitation A 123 N 2	1
(c) Against executor de son tort—Limitation A 123 N 2	
(d) Adainst percon to whom property has been bequesthed with	
direction to pay certain legacy—Limitation A 123 N 2	1
(a) Ratu can as heirs of person dring intestate taking as toggats.	
in common—Limitation A 123 N 4	
(f) By Buddhist hoir against other heirs—Limitation A 123 N 4	
(g) By heir against person in possession who has taken out	
(i) By heir under Chioese Customary law A 123 K II (j) By Hiodu heir against co-heirs constitution joint family for	
(k) By Muhammadan hair against other hairs Timitation A 123 N 4	
(I) I must the A 123	
(m) Limitatico—Startiog point A 123 N 11	
(n) Sust of housed, subother hour aloins for administration of estate	
of deceased person A 121 13	
(c) Time, whether extended by virtuo of S. 6, Lim. Act A 123 N 13	
(p) Whether must be against some person legally charged with duty of distributing estate for applicability of Art. 123 A 123 N 3	
The second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of th	
Irrigation Cess Act	
—Surt for refund of water cess against Secretary of State—Time	
under is 15, Dimitation Act can be neducted	
Joint contractors	
icknowledgment of payment by one of them inect of	
deaning of	
(a) Co-neirs of single deptor, it joint contractors	
(b) Contract when made not entered into by several persons	
jointly but by a tole contractor—Two or more persons sub- sequently becoming jointly liable under the contract—Such	
persons, if point contractors S 21 N 8	

persons, if joint contractors

•••

Joint contractors—Meaning of—(Contd.)	
(c) Mortgagor subsequently transferring portion of equity of	
redemption to another—Such person becoming jointly liable	
with mortgagor in respect of mortgage-Mortgagor and	
transferee are not joint contractors	S 21 N 8
(d) Principal debtor and surety, if joint contractors within S. 21:	S 21 N 12
(e) Test to see if any set of persons would constitute joint con-	
tractors	S 21 N 8
(f) Two persons making a joint contract	
(1) Death of one of them leaving his heir.—The other and	
the beir are joint contractors	S 21 N 8
(11) Their successors are joint contractors	S 21 N 8
-Mere fact that certain persons are related to each other as joint	
contractors—Whether by itself makes them agents of each other	
for making acknowledgment	S 21 N 7
Joint creditnrs	
Whether one can give discharge on behalf of all within the mean-	
	S 7 N 22
	5 1 11 24
Joint family—See also: Hindu law—Joint family.	
Joint family property	
(a) Burden of proof, as to property being joint	A 127 N 5
(b) Partition of	
(1) Kinds of	A 127 N 6
(ii) Partition as division of shares, defined	A 127 N 6
(iii) Partition as division of shares and partition as division	
of title, distinguished	A 127 N 6
(iv) Partition as division of title, defined	A 127 N 6
(c) Person excluded from, share of	
(1) Absence standing by itself, whether sufficient to con-	A 127·N 11
stitute exclusion (11) Assertion by defendant that property was separate	A 120 N LL
self-acquired property, whether constitutes exclusion	
	A 127 N 11
(iii) "Exclusion"—What constitutes	A 121 H 11
(a) Illustrature eases	A 127 N 11
(b) Question, whether of law	A 127 N 11
(1v) Fact that plaintiff does not ask for share, whether	11 12 11 11
amounts to exclusion	A 127 N 11
(v) Intention to exclude, whether essential element, in	
exclusion	A 127 N 11
(vi) Mero absence of member from family, whether suffi-	
cient to establish exclusion of such member from	
family property	A 127 N 11
(vii) Mere non-participation in profits of property, whether	
exclusion	A 127 N 11
(viii) Partial exclusion, whether exclusion within Art. 127:	A 127 N 11
(ix) Proof of quarrels between parties where parties con-	
tinue to live in union after quarrels, whether proof of	1 100 37
exclusion	A 127 N 11
(d) Possession of, by coparcener converted to alien faith— Nature of	A 107 N 9
(e) Property held by members of mapilla family in Malabar.	A N 9
	4
whether joint family property	*

2890	GENERAL INDEX	
Joint	family-Joint family property-(Contd.)	
	(f) Property in hands of daughters, whether joint family pro-	
	perty	A 127 N 4
	(g) Property in hands of widows, whether joint family property:(h) Property left by Borman Buddhist ancestor, whether joint	A 127 N 4
	family property (1) Property left by Hiodu ancestor governed by Dayabbaga	A 127 N 4
	School of Hindu law, whether joint family property (1) Property left by Hindu ancestor governed by Mitakshara	A 127 N 4
	law, whether joint family property	A 127 N 4
	(k) Property left by Mahomedan till division among members, whether point family property	A 127 N 4
	(1) Share in—Suit for	
	(i) By assignee of interest of daughter's soo—Limitation	A 127 N 3
	applicable	A 127 N 3
	(i) By	A 127 N 16
	(ii) By (iv) By possession	A 121 11 24
	of transfer made by another member of joint family-	
	Limitation	A 127 N 3
	(v) By stranger against member of family-Limitation	A 127 N 8
	(vi) Limitation—Starting point	A 127 N 15 A 127 N 4
	(vii) Parties Mahomedans-Limitation	A 12/ N =
	(viii) Right to property, whether gets extinguished under	
	Sec. 28, Limitation Act, if suit is harred under Art. 127	A 127 N 17
	Art. 127 (ix) Suit to re-open partition and re-adjust shares on ground	
	of mistake—Limitation	A 127 N 14
	(m) Suit for share by person excluded from	A 127 N 2
	(1) Essentials of applicability of Art. 127	A 127 N 13
	(ii) "Exclusion"—Burden of proof as to	A 121 11 12
	(iii) Exclusion, whether must be total or partial to start	A 127 N 11
	time ruuning A 12	7. A 127 N 2
	(iv) Limitation—Starting point A 12 (v) Suit by Birman Briddhist—Limitation	A 127 N 4
	(vi) Suit by co-widow—Limitation	A 137 N 4
	(vii) Suit by daughter praying for partition as a mode of	
	convenient enjoyment—Limitatioo	A 127 N 4 A 127 N 4
	(viu) Suit by Dayabhaga Hindu—Limitation	V 151 H z
	(ix) Suit for accounts of moveable property left in manage-	
	ment of one member of family after disruption of joint status of Hindu family—Limitation	A 127 N 6
	(x) Suit for actual possession of share by partition—Limi.	- 17 10
	tation	A 127 N 13
	(xi) Suit for declaration of right to joint family property	
	and for injunction-Whether one for share in joint	A 127 N 13
	family property (xii) Suit for partition by hoir of tenant-in-common against	
	heir of another tenant in common Limitation	A 127 N 6
	(xin) Suit for recovery of maintenance or arrears thereof by	A 127 N 13
	member of Malabar tarwad—Limitation	
	(xiv) Suit for undivided joint family property where there	A 127 N 6
	has been only partial partition—Limitation (xv) Suit to enforce a right to share—Meaning of	A 127 N 13
	,	

Joint family—Joint family property—Suit for share by person —(Contd)	on e	xcluded	from
(vvi) Suit where there was division of status even	with		
reference to properties which were not divided			
metes and bounds—Limitation		1 40	27 N G
—Joint Hindu family	• • • •		0
(a) Interest of member—Purchasor at execution salo			
(1) Nature of right acquired by such purchaser		A 15	0 N 2
(ii) Purchaser, whether can apply for delivery of possess	ion		30 N 2
(b) Manager of — Aftenation of coparcenary property by —			10 11 2
for setting aside, by minor momber of family—Limitati			4 N 5
—Joint status	юш.	A s	14 14 0
		4 10	7 N 6
(a) Severance of—Burden of proof as to (b) Severance of	•••	A 12	11 11 0
		4 40	
(1) By conversion of copareener to alien faith	•••		7 N 9
(11) How effected	•••		7 N 6
	п	A 120	N 15
Member of			
(a) Married daughter, whether member of joint family	***	A 12	7 N 3
(b) Member of Burman Buddhist family who marries, whe			
remains member of joint family		A 19	7 N 3
- Partition of Suit for declaration that property in possession			
father is partible after his death—Limitation		A 120	N 81
Presumption as to possessing joint property, whether applies	•••	A 12	7 N 5
Joint promisees			
Suit on joint right of action-Necessary parties		S 22	N 23
Joint promisors			
D to the Alle MT		8 22	N 23
	•••	~ ==	11 20
Judgment			
Dato of What is	٠.	A 15	3 1/1 3
(a) Where judgment is pronounced in absence of parties or t	heir		
counsels on date of which no notice has been given			
them A 15			
—Enforcement of What is	•••	, A 18	3 N 4
Executable judgment_Suit upon_Maintainability		A 12	2 N 1
Foreign judgment-Sce under : Foreign judgment.	•••		
Letters Patent			
		4 45	
(a) Whether equivalent to decree within Art 151	•••	A 15	
(b) Whether equivalent to order within Art. 151	•••	A 15	
—Meaning of	•••	A 12	2 N 3
Review of			
(a) And amendment of judgment—Distinction between—Effe	ects		
, of ,	•••	A 15	
// / / / · · · · · · · · · · · · · · ·	• • •	A 162	N 2
Imitation—Effect	οŧ,		
on court-fee chargoable	• • •	A 173	3 N G
(ii) Application time-barred—Payment of court-fee, w	be-		
ther enables party to apply for review beyond per			
of limitation	• • • •	A 173	3 N 6
(in) Art. 173 and Arts. 161 and 162, distinguished	•••	A 173	

Judgment	Review of App	lication for	(Contd.)					
_	(iv) Court-fee on-	-And limitat	ion		•••			N (
	(v) Date of decre	$-\Lambda$ mond m o	nt of decree	-Effect of	•••			N 5
	(vi) Limitation—8	Starting poin	t	•••	$\Lambda 173$; Λ	173	Νŧ
	(vu) Time, whethe	r can be exte	nded by virt	mo of S. 5, I	imi-			
	tation Act	•••	***	•••	•••	A	173	No
	Effect of			20.5	•••	A	152	Νō
(0)	Judgment of High	Court—Sec:	High Court	—Judgmeoi	lo			
(f)	Judgment of Smal		rt—Sec : C	ourt — Con	rt ot			
	Small Causes—Jud							
Roviv	or of—What constit	utcs	***	•••	•••	Λĵ	83 1	N 10
Suit c	n							
(a)	Against whom main	taioable				Λ	122	N 2
(b)	Decree for money	payable by	instalment	s—Limitatio	on 			
	Starting point	***	***	•••	***	A	122	N 7
(0)	If maintainable, wh	other remedy	by execution	on is availab	le or			
	not-English law		•••	. ***	. ****	Ą	122	NI
(a)	Judgment obtained	in British In	dia—Limita	tion:	A 122	; Λ	133	MT
(e)	Plaintiff obtaining	decree for m	onoy—Rofu	sal of execu	tion			
	against family prop	porty of judgr	nont-debter	10 the mod	18 01			
	his son—Subsequo	nt suit by de	cree-neider	against son	5 01			
	maginent debtor of	n their pions	obligation to	pay the w		Á	199	N I
10	against thoir fathe	r—Suit, Who	ther one oo	ludgmeur	•••	Ä	199	N 7
	Rocogoizanco-Lim Starting point	ittation—stri	ting polor	•••	•••	Ä	122	N 7
What		•••	•••	***	•••	••		
	t 19 Arbitration award v	which so not	eled into Co	ount on inco	rtvo-			
(u)	rated in decree of	Vilicii is not	nica into O	within Art	122:	Α:	122	N 3
60	Garnishoe order abs	oluta whathe	er judgmont	within Art	132:	A :	132	N 3
13	Order of High Cou	ort mood in	asarciea of	ita insolve	ncv			
(0)	jurisdictioo, wheth	er undement	within Art.	199	•••	Α:	(22	И 3
(a)	Recogoizanco, whet				•••	A :	122	N 5
	Report of Commiss				ban			
(0)	accounts of partner	rshin accente	hy the Co	ort in award	ling			
	profits to one of	the partners.	whether it	dement wit	hin			
	Art 122	•••		***	•••	A 1	22 1	N 3
(1)	Solonamalı filed in	Court and ac	copted by it	but no de	ereo			
	drawn up with usu	ial provisioo f	or execution	, whether it	ıdg-		22 1	v 8
	ment within Art. 1	123	•••	,	.::	Δ	. 22 1	
(g)	Statement and reas	sons givon b	y Judgo as	grounds of	เมร	. 1	22 1	3
	decisions, whether	judgmont	•••	•••	•••			
Judgment	-debtor							
—Appli	cation by							
(u)	Complaining deliver	y of property	in excess of	what has b	eon	. 1	65 N	: 3
(ь)	decreed or sold—L Under O. 21, R. 2, (unitation 2) Cıvil P. O.	_Limitation	A	171;	\ 1	71 N	3
-Deatl	of, whother gives fr	esh starting 1	mint for app	eal from dec	rco .	10	s N	10
by le	egal representativo	•••		***	^	100	, 11	
Judgn	nent debtor out of r	ossession of	property sol	d—Illustrat	ivo		37 N	5
cases	•	•••	•••		•••	A 1		
——Legal	representative of	Appeal by, fro	om decreo to	High Court		156	: X :	10
Lim	itation—Starting poi	nt		•••	^	100		-

	GENERA	L INDEX			2893
Judgment-debtor -(Conto	1)				
Meaning of					
(a) Person claimin, ment-debtor	through judge	ment-debte	or, whether	: judg-	A 174 N 4
(b) Transferee of eq		on in prop		t from	
judgment-debt	or, whether judg o-holder for com			to cer.	A 174 N 4
tify payment made	out of Court-	Limitation	-Starting	point:	A 115 N 6
(a) Whether can pl					A 174 N 4
(b) Whether can ple	ad uncertified p	ayment m	ade by him	• •	A 174 N 4
Jarisdiction			.		
Original jurisdiction o					
Original jurusdiction of			ourt of Sine	1, basis	
of Proceeding instituted		period of l	limitation	Court,	A 162 N 4
if deprived of jurisdic	tion to try	•••	•••	•••	S 3 N 37
Labourer					
Meaning of	•••	•••	***	•••	A7N4
Laches					
Doctrine of, as disting	utshed from doc	trine of lin	nitation	1	Preamble N 5
Lakhiraj grants					
Assessment of_Right		-Whether	extinguisb	ed by	
bar of limitation Resumption of—Right	-4 Com	3576			A 149 N 8
by bar of limitation		· WEE	ner exting	uisned	A 149 N 8
Land	•••	••	•••	• • •	11 120 11 0
Acquired by Governme	nt-Compensat	on for—S	uit for : See	under	
Compensation					
Definition of	***	•••	•••	***	A 125 N 12
Resumption of					
(a) If resumable wi	ent revenue la vo			kempt	A 100 M
(b) Right of, when				ndant	A 130 N 3
for life	***		•••		A 130 N 3
(c) Suit for					
	and granted for	personal s	ervices—Li	mıta.	
	rting point Lands granted	for corvi	a Turnitat	***	A 130 N 3
	ont	*** DULYR	.o—Limitat		A 130 N 3
(111) In case o	f rent-free land	for part	icular purp	ose-	11 100 11 0
	nStarting poin		•••	•	A 130 N 3
	-Starting point	i	• •	•••	A 130 N 3
Land Acquisition Act					
Section 11 and 12-Pi	rovisions of, as to	o award of	compensation	on for	
Section 18	•	•••	•••	•••	A 17 N 1
(a) Application und	er—Tune taken t	to obtain e	ony of Colle	ctor's	
order-Whethe	r can be exclud	ed in com	puting limit	ation	S 12 N 5
(h) Proceedings und			_		
—If available	• •	•	•••	86	N 20 F N 2

Land Acquisition Act—(Contd.)	
-Section 54-Appeal under-Appeal to High Court-Limitation:	A 156 N 3
—Whether special law within the meaning of S. 29	S 29 N
Land Acquisition (Mines) Act	
Compensation under-Recovery of-Suit against Government-	
Limitation	A 120 N 9
Landlord-See also Landlord and tenant.	
—Definition of, within Art. 139	A 139 N 4a
—Ground landlord — Dues payable to, on occasion of marriages—	11 200 11 11
Whether rent	A 110 N 2
-Sbare of produce to be given to-Whether rent	A 110 N 2
-Suit against, by tenant who has acquired under S. 28, Limitation	
Act, title to property—Limitation	A 139 N 5
—Suit by	
(a) Against alience from tenant for possession on ground of	
forfesture incurred by alienation—Limitation	A 139 N 3
(b) Against mortgagor where usulructuary mortgagee loases back	A 139 N 5
mortgaged property to mortgagor—Limitation	A 135 N 0
(c) Against porson entering upon property under invalid lease but from whom owner goes on recoiving rent—Limitation	
applicable, whether same as applicable to suit by landlord	
for possession from tonant	A 139 N 18
(d) Against representative of deceased tenant-Limitation	A 139 N 4b
(e) Against third person who gets into possession of property	
and claims to hold adversely both to fandlord and tenant-	
Limitation	A 140 N 5
(f) By principal on termination of lease in favour of agent-	A 139 N 4
Limitation	A 100 1. 1
(g) By successor of limited holder— Lunitation applicable, whe- ther same as applicable to suit by fandlerd for recovery	
from tenant	A 139 N 4a
(h) For possession against third party who has dispossessed	
tenant—Limitation	A 140 N 5
(i) For recovery of possession from tenant-Limitation-Appli-	
cability of Arts. 139 and 140	A 140 N 5
(1) For removal of trees wrongfully planted by a person—Limi-	
tation	A 120 N 10
(k) To recover possession from tenant A 13	9, A 139 N 2
(i) Art. 139 and Art. 144 distinguished	A 139 N 2 A 139 N 2
(ii) Essentials of applicability of Art. 139	A 139 N 2
(iii) Limitation—Starting point	
(iv) On determination of tonancy (a) Art. 139 and Special or Local Act	A 139 N 15
(b) Burden of proof	A 139 N 20
(c) By whom maintainable	A 139 N 4a
(d) Defendant, whether can plead in the alternative	A 139 N 21
both tenancy and bar of limitation	
(e) When the tenancy is determined—Illustrative	A 139 N 51
(f) Where there is renewal of tenancy—Limitation	
-Starting point	A 139 N 6

GENERAL INDEX	2895
Landlord—Suit by—To recover possession from tenant—On deter- tenancy—(Contd)	rmination of
(g) Temats' right to property is extinguished under S. 28 if suit for possession is barred under Art. 139	A 139 N 11
(v) On ground of forfeiture and determination of tenancyLimitation	2, A 143 N 4
(vi) On ground of forfeiture or breach of condition — Art 133 and Art 143 distinguished (vii) Suit for rent by landlord, whether maintainable if suit	A 139 N 3
for possession is barred under Art 139	Λ 139 N 1 ₁
Landlord and tenant — Adverso possession—Sce · Adverso possession — Dispossession of tenant—Dispossession, if can be set up in defence	
to suit for rent Landlord under Madras Local Boards Act liable to pay Government cess—Tenant liable to landlord for sums so paid—Suit by landlord against tenant for recovery of sums paid as Government	S 3 N 15
cess—Limitation Mutt, tenant of temple—Same person trustoo for temple and mutt —Another person becoming trustee of temple alone—Wbether	A 61 N 10
gets fresh cause of action for recovery of rent as part of the temple property in the hands of the ox-trustee—Payment of premium by tenant to landlord probibited by	S 9 N 12
Bombay Rent Act—Claim for refund—Lunitation ——Relationship of	A 120 N 2
(a) How arises (b) Relationship between khot and his tenant, whether one of	A 110 N 2
landlord and tenant	A 139 N 4
whether created between parties (d) Whether essential for suit for rent —Right of landlord to assess rent—Whether harred by mere non-	A 139 N 18 A 110 N 2
payment of rent by tenant where land is not rent-free and relationship of landlord and tenant exists Right to recover possession of land from tenant lost by failure to sue for 12 years after termination of lease—Right to recover	A 190 N 1
arrears of rent for years within the 12 years or to recover to landlord, an idiot—Death	S 28 N 6
rual of right to sue—Idiocy continuing till death—Representative, if entitled to extension of	
time	S 8 Illus 3
 (a) Against sub-tenant of tenant for ejectmont—Tenant implea- ded after period of limitation—Whole suit, if becomes barred. (b) For contribution for payment of Government cess, portion of 	S 22 N 5
which tenant is bound to contribute—Limitation (c) For ejectment—On ground that defendant is tenant at will	A 120 N 25
—Suit, whether one for correction of entry in record of rights (c) For ejectment of trespasser for putting lessee in possession	A 120 N 50
	12 & 144 N 86

2896 GENERAL INDEX.	
Landlord and tenant—Suit by landlord—(Contd.) (d) For possession on allegation that tenancy had determined—	
Dismissal of suit — Subsequent suit for rent—Cause of action for suit, if affected by suit for possession S 9 N 11	
(e) For recovery of drainage charges payable by tenant under Bengal Drainage Act—Limitation A 116 N I	
(f) Tenant dispossessed during continuance of lease—Suit hy landlord for possession against trespasser — Limitation— Starting point A 142 & 144 N 86	
(g) Trespasser already in possession at commencement of lease —Suit against trespasser—Landlord is not entitled to freeb	
period of limitation from termination of lease: A 142 & 144 N 86 —Suits between—Necessary parties S 22 N 23	
Tenant, if can acquire by prescription any easement against his landlord S 26 N 13	
— Tenant, if can acquire easement for benefit of dominant tenement in his possession and landlord thus gains prescriptive right	
Land Registration Act	
Lease	
part of assignce to indemnify assignor in respect of covenants in lease A S3 N 8	
By usufructuary mortgagee—Rights of parties A 110 N 8	
—Covenant for quiet possession—Lessee not put in possession—	
-Failure of lessee to plant certain trees within the time fixed in the	
Lessee - Suit against, by lessor to restrain lessee from inter-	
fering with lessor's right under covenant in lease to enter upon land demised and to cut and take away trees—Limitation A 120 N IO —Lessor—Whether claimant of lesseo	
— Lessor's failure to deliver possession at commencement of term— Whether a continuing breach of covenant for quiet possession S 23 N 7	
Of immovable property—By revenue authorities for arrears of Government revenue—Setting aside — Suit for, against Govern-	
—Of paghir—Expiry of leaso—Lessee collecting rents after expiry—	
tation A 134 N 1	
Perpetual lease—Whether alienation A 125 N 13	
(a) Rent duo under—Suit for—Limitation A 116 N 1 (b) Suit on—Limitation—Applicability of Art. 116 and Art. 110 A 116 N 1	
- Whether transfer for reducible consideration A 134.ABC N 7	

Lease_(Contd.)	
Zarpeshgi lease-Lease deed registered-Rent duo under-Suit f	
Limitation	A 116 N 8
-And share in residue bequeathed-Distinguished, under Engli-	ah.
law	A 123 N 9
	A 123 N 9
	A 123 N 9
	A 43, A 43 N 2
-Right to sue for, accruing during minority - Period within which	ch
suit should be brought	., S 8 Illus 1
(a) Against administrator—Limitation	A 123 N 2
(b) Against executor—Limitation	A 123 N 2
(c) Against executor de son tort—Limitation (d) Against person to whom property has been bequeathed with	A 123 N 2
direction to pay certain legacy-Limitation	A 123 N 2
(e) By heir against person in possession who has taken out letter of administration—Limitation	
(f) By heir against person in wrongful possession-Limitation	., A 123 N 6 : A 123 N 6
(g) By legatee against debtor for debt due to testator given a	3.5
legacy—Whether one for legacy	. A 123 N 9
tation	A 123 N 9
estate -	
	A 123 N 3
estate o	of
deceased person A 62 N 16, A 1	. A 123 N 8
(n) Mere direction by testator that executor shall have powers of	of
management during minnrity of legatec, whether postpone starting point	
(o) Part payment of legacy by person liable to pay legacy, who	. A 125 N 11
ther gives fresh period of limitation	. A 123 N 12
(p) Payment of interest as such on legacy by person liable t pay legacy, whether starts fresh period of limitation	. A 123 N 12
(a) Time, whether extended by virtue of S. 6, Limitation Act	. A 123 N 13
(r) Time, whether extended by virtue of 8 6, Limitation Act, is case of minor heir of deceased person who dies without	a t
claiming his share in estate	. A 193 N 19
(s) "When legacy becomes payable"—Legacy, when become	
(t) When legacy is payable annually	. A 123 N 11
(n) Whether must be against some person legally charged with	h
duty of paying legacy for applicability of Art. 123	
What is Residuary share in property bequeathed, whether legacy	
When becomes payable	
Legal disability	

2000	
Legal disability—(Contd.)	
whore plaintiff is under legal disability and cases where there is	
no person capable of suing	S 6 N 3
Cessation of Extension after Date on which disability ceases, if	50110
to be excluded when disability educes, if	S 6 N 31
	S 6 N 31
	20 11 01
Collection of individuals—Time when last of the persons under	
disability coasing to be so-Whother time when disability of per-	S 6 N 7
sons entitled to suo comes to end	2011
Competency to sue at commencement of limitation - Roversioner	
under Punjab Customary Law not competent to sue at the time	
of commoncomont of limitation - Extension of time on ground	0 0 37 10
of disability, if available	S 6 N 18
Death of porson under	
(a) Death after cossation of disability but before expiry of	
oxtended period - Legal representative, if gots fresh start	0.031.10
of limitation from doath of his prodecessor	S 6 N 42
(b) Death before cessation of disability - Legal representative,	0.0 17.10
whon gets fresh start of limitation	S 6 N 42
Disability and inability-Distinction between	S 9 N 4
- Disability arising after limitation has begun to run - Disability	
existing at time from which fresh period of limitation is to be	~ ~ 17 0
computed under S. 19-Extension of period of limitation	S 9 N 3
Disability at time of accrual of right - Reversioner succeeding to	
estate after Hindu widow-Disability at time of so succeeding -	a a st 10
Extension of time, if available	S 6 N 19
Disability of one of several plaintiffs or applicants	
(a) All persons jointly entitled to sue under disability - Exten.	S7N3
sion of time, if available	SINO
(b) Capacity to give discharge on behalf of all	
(i) One joint administrator, if can give discharge on behalf	S 7 N 26
of all	S 7 N 25
(ii) One joint trustee, if can give discharge on bohalf of all:	9 1 14 20
(iil) One of several executors, if can give discharge on	S 7 N 26
behalf of all	S 7 N 24
	914122
	S 7 N 27
bohalf of all	., , , ,
(c) Capacity to give discharge on behalf of all within S. 7	
(1) Persons aggrioved by the same tertious act.—One of	S 7 N 23
thom, if can give discharge on behalf of all	
(ii) Whether one co-mortgageo can give discharge on behalf	S 7 N 22
(iii) Whether one joint creditor can give discharge on behalf	
-f -11	S 7 N 22
(iv) Whether one of several co-heirs can give discharge on	
behalf of all	S 7 N 23
(d) Co-heirs, whether persons jointly entitled to suo within	- 00
S 7	S 7 N 23
(e) Davabhaca family, members of Limitation, when begins to	
run against all—One member, if can give discharge in regard	
to causes of action accruing in favour of members of tho	S 7 N 20
family	51320

Legal disability—Disability of one of several plaintiffs or applicants	—(Contd.)
(f) Disability, if should exist at the time from which limitation	
is to be reckonedholders—Effect of	87N7 87N6
mt his concurrence—	
(1) Discharge not capable of being given without his con-	S 7
currence	S7N1
•	S7 N 1
(i)	S 7 N 23
Marine the are	
ies	S7N 22 S7N 22
(I) Extension of time on ground of—Test to determine if extension available	87N2
(m) "Is under any disability" in S 7—Meaning of (p) Joint creditors, whether persons jointly entitled to sue	S7N7
within S. 7	S7N 22
(o) Joint trustees, if jointly entitled to sue within the meaning	
of S 7	S 7 N 25
(p) Jointly entitled	
 (i) Matter giving separate rights to persons to sue for the same relief—Persons, if jointly entitled 	87N4
(ii) Meaning of	S7N4
(iii) Substantive right of the parties, if should be joint for	21112
extension of time	87N4
(q) Lu ''	
per.	
(a) Competency of one joint decree-holder to give	87N8
discharge on behalf of all—Effect of	S 7 N 15
(b) 'Give discharge,' meaning of	S7N9
(c) Such discharge, when can be given	S 7 N 10
(11) Discharge not capable of being given without con-	
currence of person under disability—One of several	
plaintiffs under disability—Effect of	S 7 N 14
(iv) Guardian, joint decree-holder with minor—Capacity to	S 7 N 17
give discharge	S 7 N 15
(v) Kannavan and adult male members of tarwad, if can	
give discharge in respect of causes of action accru-	
ing in layour of the whole tarwad	S 7 N 21
(vi) Mahomedan co-heirs—Decree passed jointly in favour of all co-heirs — One, if can give discharge on behalf	
of all	S 7 N 15
(r) Limitation, when - 17 not	~ 10
no such discha	S 7 N 11
(s) More than one:	
Extension of time, if available	S7N3
 (t) Partners, whether persons pointly entitled to sue within S. 7: (u) Persons aggreed by the same tortious act—Whether per- 	S 7 N 24
sons jointly entitled to sue within S. 7	S 7 N 28
(v) Provisions as to-Applicability to applications for execution:	\$7N5

T. (a) disability Disability of an afarmed plaintiffs on applica-	nka (Cont)
Legal disability—Disability of one of several plaintiffs or applican	its—(Conta.
(w) Provisions as th	
(i) Applicability to eases in which substantive right is not	S7N
joint but cause of action is joint	STN
• • • • • • • • • • • • • • • • • • • •	S 7 N
position of tenants in-	0111
common Position in renames in	S7N
(x) Right to sue vested jointly in minnr and adult—Capacity to	
give discharge—Adult, if can give discharge without con-	
currence of minor's guardian	S 7 N 29
(y) Suit by Hindu reversioner challenging alienation by widow	
-Limitation, when begins to run	S 7 N 21s
(z) Suit by Hindu reversioners challenging alienation or adop-	
tion by widow	56N1
(z1) Suit by wards constituting members of Hindu joint family	
to set aside alteration by guardian-Limitation	S7N19
(z2) Suit to set aside collateral's alienation by reversioner under	
Punjab Customary Law-Limitation, when begins to run	S 7 N 211
(z ³) Tenants in common—Suit by, for mesne profits—Tenants.	•
in common, whether persons jointly entitled to sue for	
possession within S. 7	S 7 N 27
(z4) "Time will not run" in S. 7—Meaning nf	S 7 N 19
	S 7 N 19
- Disability of plaintiff Defendant'e absence from British India	S 9 N 3, 4
Whether disability or inability within 5.9	S 9 N 3, 4
- Disability or mability to sue in S. 9	· 89N4
(a) Disability, if confined to minority, insanity and idiocy	. 651.2
(b) Inability to sue, if includes cases where the inability refers	59 N 4
to an application	59N4
(c) Meaning of	
(d) Plaintiff, alien, being prevented from suing on account of outbreak of war between his mother country and Great	
Britain—Whether disability within S. 9	S9N4
Disability subsequently supervening — Whether stops running of	
limitation	S 9 N 3
Disability to sue or apply arising from circumstances other than	
order of Court—Whether amounts to stay by injunction nr order	
within S. 15	S 15 N 6
- Disability to sue or apply arising from existence ni agreement	
between parties that suit or execution should not be instituted or	
proceeded with—Whether amounts to stay by injunction or order	S 15 N 7
within S. 15	S 6 Cl 2
- Double or successive disabilities-Effect of	
- Effect of an limitation-Whether proceeding must be filed within	58N4
three years of cessation of disability in all cases Evidence as to	S 6 N 29
Lvidence as to	0
	SGNG
make an application"	S6N8
in S 6—Meaning of	Powe
	86N2
(a) Conditions under which extension can be given	86N S
(b) Disability, when should exist	20-

egal disability—(Contd.)	
—Extension of time on ground of	
(a) Alienation of joint family property	
(i) Pre-existing coparcener dying-After-born coparcener,	
if can sue within thren years from date on which	
deceased would have attained majority if he had	
	6 N 16 F N
(ii) Suit by coparcener whn was minnr at time of aliena.	0.637.1
(ni) Suit for possession against alience by after-born	S 6 N 1
· · · · · · · · · · · · · · · · · · ·	S 6 N 1
(h) tomast Eutersian of amiliable for	SGNI
(c) Application for bringing on record legal representatives—	50111
Extension, if available	S 6 N 1
(d) Application for execution-Application for revival of previous	
execution proceeding struck off for an default of decree-	
holder-Extension, if available S	6 N 13 F N
(e) Application for final decree in mortgage suit - Extension, if	
available	S 6 N 1
(f) Application for leave to appeal—Extension, if available	S 6 N 1
(g) Application for personal decree against mortgagor under	0.037.4
O. 34, R 6, Civil P. C.—Exteosion, if available	S 6 N 1
'ansion, it available uit or appeal dismissed for	86N1
	S 6 N 18
(j) Application to file an award—Extension, if available	S 6 N 1
(k) Application to set aside ex parte decree - Extension, if	
available	S 6 N 1
(I) Cause of actioe same for person becoming entitled to sue-	
Extension, if available	S 6 N 1
(m) Extension when not available—Ordinary period of limitation	
itself continuing for three or more years from cessation of	2017
disability—Extension, if available (n) Limitation — Maximum limit up to which time can be	58 N
extended to which time can be	S 8. S 8 N
(o) Nature of — If available to person deriving right to suo from	50,504
person under disability	S 6 N 3
(p) Period extended, if "period prescribed" for suit or application.	S 6 N 41
(q) Period fixed by Court—If can be extended	S G N 22
(1) 10 11 0 10 0 10 0 W1 - 1 11	S 6 N 21
	5 U N 21
(s) Person entitled not under disability but suit or application for benefit of one under disability—Extension, if available	S 6 N 8
(t) Person entitled to sue under disability — Suit for benefit of	DUNC
person not under disability—Extension, if available	S6N8
(u) Persons entitled to — Person deriving right to sue from	50110
person under disability—Extension, if available	S 6 N 32
(v) Persons to whom extension available	00.110.
(1) Limitation beginning to run against nne-Another	
becoming entitled to sue on same cause of action-	
Disability of such person at time of his becoming so	
entitled—If ground for extension	S 6 N 14
(ii) Persons should be entitled to sue or apply for execu-	S 6 N 14

Legal disability-Extension of time on ground of-Persons to whon	extension
available—(Contd.)	. 0210113101
(iii) Person who becomes entitled to sue or apply subse-	
quent to commencement of limitation	S 6 N 1
(w) Privilege, if confined to proceedings instituted after cessation	
of disability	S 6 N 3
(x) Proceedings for which extension available	S 6 N 1
(y) Provisions as to applicability to cases where one of several	C C 17 (
persons is under disability	S 6 N 8
(z) Suit by after born member of Hindu joint family to set aside	S 6 N 10
alienation of joint family property	2 0 W TO
(z1) Suit by member of Hindu point family challenging alienation	S 6 N 16
of joint family property (z²) Suit or proceeding for which limitation is prescribed by	50111
special or local law—Extension, if available	S 6 N 20
(z ³) Whether applies to legal persons	SGNO
(z4) Whether available to unincorporated collection of individuals:	SGNT
(z ⁵) Whether can be granted apart from statute on general	
priociples of equity	S 6 N 20
Extension of time under	
(a) Cause of action different—Distinct cause of action accruing	
to person entitled to suo-Extension, if available	S 6 N 14
(b) Period of limitation prescribed by the Civil Procedure Code	
-Exteosion, if available	S 6 N 20
-Fresh start of limitation in favour of person deriving right to sue	
from another—Disability, if ground for extension of time	S 6 N 14
Hindn idolIf a perpetual minor for purposes of limitation	S 6 N 30
Incapacity to sue-Distinction between	S 6 N 3
Insanity-Extension on ground of-Insanity of decree-holder after	
passing of decree—Right to extension of time	S 6 N 15
Kinds of	S 6 N 2
(a) Affording ground for oxtension—Married women, state of	S 6 N 23
being	S 0 M 20
Logal representative, disability of	
(a) Death of person originally entitled to sue after cessation of	
disability Disability of legal representative at time of death	S 6 N 44
 If ground for extending time in his favour (b) Death of person under disability before ecssation of disability 	
-Legal representative under disability at time of death-	
Whether ontitled to compute limitation from cossation of	
his disability	S G N 44
Limitation, postponement of	
(a) Person entering into possession in assortion of title hostile to	
that of person under disability—Limitation, if postponed	S 6 N 32
till cossation of disability	501102
(b) Right to sue accruing to person under disability in respect of	
property—Transfer of property—Limitation against assignce,	S 6 N 32
when commences S 6 N 3, 23, S 6 N 3, 23,	21, 27, 28
(a) Absence of defendant from British India, whether plaintiff's	
disability or inability to sun	S 13 N 2
(b) Distinction between legal disability and incapacity to sue	S 6 N 3
(a) Married manage of manage and a disability	S 6 N 1

Legal disability-Meaning	of-(Contd)				
(d) Person under legs	ıl di∗ability\	Vhether be	rson incap	able of	
institutiog a suit	within S. 17	•••			86 N 3
-Minority-Minority of					
limitation for suit by	him challengit	ig alienatio	n nr adopt	ton by	0.0 17.17
widow		.,		; *	S 6 N 17
Minority, lunacy and id		the nur g	rounds on		S 6 N 23
time can be extended	•••	•••	• • •	•••	S 6 N 29
Onus of proof as to	•••	•••	•••	•••	5 0 R 20
Person under			T2054		S 6 N 3, 37
(a) Administrator, ap (b) Disability continu				•••	S 6, S 6 N 1
(c) Guardian, exister					50,5011
available	ico bi—meei-	— EXCENSION	i or time,	11 1500	S 6 N 35
(d) Limitation, runni		_lf prevent	ed	•••	S 6 N 32
(e) Representative of		1.0.00		•••	
11 20 1 13	, ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,				S6; S6 N 1
			•••	***	S 6, S 6 N 1
(f) · ·					
	l limitation—	L'roceeding	for which	exten-	
sion availa					86N1
(n) Extension			de—Point	oi time	0.017.1
	lisability shoul	n exist	•••	***	86N1 86
(iii) Limitation (iv) Scope of pr		•••	•••	•••	86 N 2
(v) Simultaneo		offeet	***	•••	86N1
(vi) Successive			***		86N1
(g) Proceeding instit					~ 0 2.1 2
disability-Righ			• • • • • • • • • • • • • • • • • • • •		S 6 N 35
Plaintiff under disabili	ty at time of	acknowled	gment-W	hether	
entitled to benefit of f	S. 6 also		•••		S 19 N 37
Pleadings					
(a) Plaiot, if should s					S 6 N 29
(b) Reliance on savu plaint—Sufficier		omenow sp	parent on	race or	S 6 N 29
Provisions as to	icy of	• •	•••	•••	5 U I 29
(a) Proceedings to w	nich they apply	v			
(1) Applicabilit	y to applicate	ons—Retro	spectivo ef	feet of	
8.6	***	***	*		S 6 N 4
(ii) Extension	of time on grou	nd of—If a	pplies to al	l applı-	
cations	•••	•••	•	•••	86N4
(b) Whether apply to					8, S 8 N 2, 3
 Right to sue accruing nerson entitled to inst 	to estate of d	eceased pe	rson—Abse	nce of	
tation, when begins to		spect of Etg	ur co sue-	-1411111-	S 6 N 3
Several persons entitle		use of acti	on—One e	ntitled	5016
to special privilege of					
others	•••	•••	•••	•••	S 6 N 16
——Subsequent disability—	-Whether stops	limitation	where one	e time	
has begun to run	•••	•••	•••	•••	S 9
Supervening disability	ind.,	C		4	
(a) Alienation by H aside—Minority	man grandiati	or-sult b	for exten-	to set	
time	or granuşon,		IDI EXICU		N 15 F N 1
enno	•••				

Legal disability—Supervening disability-				
(b) Disability, if should exist at the	time from	which peri	10 bc	
limitation is to be reckoned	•••	***	• • •	S 6 N 15
(c) Insanity of decree holder after	decreo 1	assed—Righ	t to	
extension of time	•••	•••	•••	S 6 N 15
(d) Reversioner—Limitation beginning				
who subsequently becomes entit	led to sue-	_Disability	of, at	
the time of his becoming entitle	d to sne-	Whether gr	ound	
for extension of time				S G N 17
Legal injury			-	
-Act of defendant itself constituting le		C 01 300	nat	
apply	gar injury	D. 2 ± 1100	HOL	S 24 N 1
One person throwing sulphuric acid on	41 Comment	raidh a T	-44	0 22 11 -
losing his eyes after some time-Act	or former	constituting	regut	S 24 N I
injury—S. 24 does not apply				0 24 14 2
- S. 21 applies only where act of defendar	it does not	of itself const	itute	S 24 N 1
a legal injury	•••	•••	•••	0 24 11 1
Legal practitioner				_
Negligence of, when actionable				A 90 N 2
Legal Practitioners Act	***			
		Could am and	-in1	
-S. 28-Promissory noto unenforceab	ie under-	-Suit on ori	groun.	
cause of action-Promissory note, if	can be use	d as reknow	reag.	S 10 N 6±
ment	• • •	***	•••	5 20 21 0
Legal process				
	•••			A 20 N 4
Legal representative				
-Addition as party of Application for				
(a) One representative applying with	in time	inother wh	ther	
can be brought on record after		illouner, win		A 176 N 7
(b) Two rival claimants seeking to b	o bronght.	an record—I	imi.	
tation—Starting point	o prought	011 25C01a—2	41	A 176 N 7
Application by	•••	•••	•••	
(a) For setting aside dismissal for de	table of d	oonenl whin	Hiff's	
appearance—Limitation—Start				A 163 N 4
(b) To set asido ex parte decree ago			in or	
defendant—Limitation	illon regar	201/2000000000		A 164 N 4
-Application for substitution of S. 22,	if appling		•••	S 22 N 3
-Bringing on record of Application for		•••		
(a) Application to bring on reco	al local t	onresentativ	10.	
deceased against whom decree	of Prive	Council is 19	ssed	
after death—Limitation	OI IIII	Council 13 In		A 181 N 13
(b) Application to bring on recor	al logal r	ouresentative	9 0	
deceased person who was not	defendant	or responder	t on	
date of death—Limitation		or response		A 181 N 13
C This of death—Elimination				
Causo of action accruing to estate		d person_I	egal	
representative alien enemy.—When		ed person—I	egal titu	0.17 % 8
	of decease becomes co	ed person—I upable of ins	egal titu-	S 17 N 8
	of decease becomes co	ed person—I spable of ins 6 N 43; A 1	egal titu- 76 N	S 17 N 8 3; A 177 N 6
	of decease becomes es	6 N 43; A 1	76 N	S 17 N 8 3; A 177 N 6
	of decease becomes es	6 N 43; A 1	76 N	3; A 177 N G
ting suit — Meaning of Of deceased agent—Suit against (a) By principal for accounts due f taigablity—Limitation	of decease becomes co S	6 N 43; A 1 sed agent—N	76 N : Iain	3; A 177 N 6
	of decease becomes co S	6 N 43; A 1 sed agent—N	76 N	3; A 177 N G

GENERAL INDEX	2900
Legal representative—(Contd.)	
-Of deceased appellant-Addition as party of -Application for	
(a) Absence of such application—Abatement of appeal—Legal	
representative, whether can apply to set aside abatement (b) Application after expiry of limitation — Whether can be	A 176 N 6
treated as application for setting aside abatement	A 176 N 6
(e) Application for substitution in appeal against order in exe- cution—Limitation	A 176 N 2
(d) Application for substitution not made in course of appeal—	A 176 N 2
4) 4	A 176 N 2
(f) Limitation—Starting point A 176, A 176 N (c) Onus of proof	2, A 176 N 5
(g) Onus of proof	A 176 N 4
(h) Provision for	A 176 N 2
(1) Time, whether extended by virtuo of S. 5, Limitation Act	A 176 N 6
(j) Time, whether extended by virtue of S. G. Limitation Act	A 176 N 6
NY 100 11 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	A 176 N 2
· I for default .	A 176 N 2
	A 176 N 2
(n) Where deceased is assessee in proceedings under Income-tax	
Act, S 66 (2)—Limitation	A 176 N 2
Of deceased defendant-Addition as party of-Application for	
(a) Absence of such application where defendant dies after preli-	
minary but before final decree, whether causes abatement	A 177 N 5
(b) Court, whether can extend time	A 177 N 7
(c) Failure of application—Abatement—Application to set aside	
-Court whether can extend time	A 177 N 7
(d) In appeal against orders in execution—Limitation	A 177 N 4
	A 177 N 2
(f) In application for leave to sue in forma nauperis—Limita-	
tion	A 177 N 2
/ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	A 177 N 8
A 17'	7. A 177 N 2
ether can be treated as	
one to set aside abatement	A 177 N 7
(j) One of joint representatives of deceased brought on record in	
time—Bringing other representatives on record after limi-	
tation—Whether barred	A 177 N 7
(k) Provision for	A 177 N 2
(1) Time, whether extended by virtue of S 5, Limitation Act	A 177 N 7
(m) Time, whether can be extended by virtue of S. 6, Limitation	
Act	A 177 N 7
(n) Where defendant dies after decree—Limitation	A 177 N 2
(o) Where defendant is dead before institution of suit but	
whose name appears as defendant in suit	A 177 N 5
-Of deceased depositary-Suit against, for moveable property depo-	
sited with deceased—Limitation	A 145 N 5
——Of deceased judgment-debtor — See Judgment-debtor — Legal representative of	
Of deceased plaintiff-Addition as party of-Application for	
(a) Absence of application	
(1) Abatement of suit—Legal representative, whether can	
apply to set aside abatement	A 176 N 6

2000	OIMIN	III INDLA				
Legal representative—Of confor—Absence of applica			ition as p	arty of,	applic	ation
(ii) Where plain	tiff dies after	prelimina	ry but befor	re final		
	hether causes			•••	Λ 177	1 N 5
(b) Application alter				can be		
(0)		ng aside ab			A 176	NG
	5000	26 00.00 00	A 176; A	176 N 2	: A 170	5 N 5
• ••	· nga_	_Limitatic			A 176	N 2
(e) Not made in cours					A 176	
(I) One representative			Another if	oon be		
brought on record		unu ume-	-Another it		A 176	N 7
	i aitei waitis	•••	•••		A 176	N 4
(g) Onus of proof	•••	•••	•••	•••	A 176	N 2
(h) Provision for			·-··		A 176	N G
(i) Time, whether ext					All	, .
(i) Where deceased is	an assessee	in proceed:	ing under 1	псоще-	A 176	N 9
tax Act, S. 66, st	1b-s. 2—Limi	tation	***	• • • •	A 176	N 9
(k) Where deceased is				tation:	A 176	N 0
(l) Where plaintiff die				***	AII	114 2
(m) Where there are t	wo rival clai	mants seek	ing to be b	rought		
on record—Limit	ation—Starti	ng point	•••	***	A 176	i N
Of deceased pawnee-Su	it against.·fo	r moveable	property r	awned		
with deceased-Limitat			, broborry F	•••	A 145	N 5
-Of deceased principal-S		nt agam) t	***			
deceased—Limitation		st agent it	or accounts		A 89	N 11
	4 3 3 3 4 4	*** .		• • • • • • • • • • • • • • • • • • • •		
Of deceased respondent-			Application	ior	A 177	N 7
(a) Court, whether ca			•••		AIII	14 1
(b) Failure of applicat	ion—Abatem	ent—Appli	ication to se	t aside	A 177	Nº 7
_abatement—Lim	itation—Com	t, whether	can exten	d time	A 177	N A
,,,			• •	•••	A 177	N O
•	•			***	WIII	11 -
•	:		*is	Limi-	Λ 177	N 9
tation		•••	•••		WIII	۸, ۵
(f) In application und		Act for bo	lance of cor		A 177	N 9
_tion—Limitation		•••	•••	•••	A 177	N 3
' (g) In execution proce		itation	•••	•••	A 177	NO
(h) In second appeal-	-Limitation	•••	•••	***	A 111	20
(i) Limitation	***	•••	•••	A 177	A 177	11 -
(j) Made alter expiry	ol limitation-	-Whether	can be tree	ited as	A 177	N 7
one to set aside a	batement	•••	•••	-::-	AIII	
(k) One of joint repre	sentatives of a	decnased br	ought on 10	cord in		
time—Bringing o	other represen	ntatives nn	record afte	r limı-	A 177	N 7
tatien—Whether	barred	•••	•••	•••	A 177	N 9
(l) Provision for	•••	•••	•••		A 177	N 7
(m) Time, whether ex	tended by vir	tue of S. 5	. Limitation	Act:	Alii	
(n) Time, whether car	n be extended	by virtuo	of S. C, Lim	itation	A 177	N 7
Act	•••	•••	•••		A III	
(o) Where respondent				al but	Λ 177	N 2
whose name appe	ears as respon	dent in app	eal	•••	Α 111	
Preceedings by-Cause	of action ac	cruing to c	estate of de	ceased	S 6	N 3
person-Limitation	•••	•••	•••	•••	50	•
- Suit against, under Legs	d Representat	ives' Suits	Act			35
(a) Limitation	•••	•••	•••	A 3	2 40 35	X I
(b) Provision of	•••	•••	***	A J	, 10 00	•

A 124 N 10

Legal representative - (Contd.) -Suit by (a) Capacity to institute suit necessary for starting of limitation when cause of action accrues to estato of deceased person S 17 N 8 S 17 N 8 (b) Capacity to sue or be sued on behalf of estate, meaning of (c) ? S 17 N 8 (n) Limitation S 17 (d) For wrong committed during lifetime of deceased person-Limitation A 20 -- Whether can continuo amplication to set aside ex parte decise made by deceased defendant A 164 N 4 - Who is Transferee of property unter tires, if legal representative S 6 N 43 Legal Representatives' Suits Act -Section 1 and Succession Act, S. 306 compared A 20 N 1 -Sut under-Limitation A 20 Legatee -Female as-Suit for estate of, by reversioner-Limitation A 141 N 10 -Suit by, for possession of property alienated by executor-Limita. tion A 91 N 19 Lessee ----Order against lessee--Whether binding on lessor A 47 N 4 Repairs of tank by lesses for his benefit—Other lesses incidentally benefited-Suit for contribution-Limitation A 120 N 25 Lessor -Profits received by-Suit for, by lessee dispossessed by lossor-A 109 N 7 Limitation _Suit by (a) Against lesses for breach of contract for not paying portion A 115 N 3 of rent to superior landlord or creditor of lessor-Limitation (b) For value of trees cut down by lessee (1) Breach of contract not to cot trees, whether essential for suit within Art. 108 ... A 108 N 1 (u) Claim of landlord under Malabar Law that value of trees cut down by kanom tenant chould be debited against tenant's claim for improvement A 108 N 1 (iii) Limitation Starting point A 108, A 108 N 2 (iv) Suit by landlord for compensation for removal of trees cut where tenant is entitled to cut trees but not to remove them ... A 108 N 1 Letters of administration ----Grant of S 6 N 3 hile administration con-S 9 N 5 (ii) Suit for recovery of debt-Running of time for suit, if suspended while admioistration continues

(c) Whether determination of right of inheritance

Letters Patent .	
Clauso 26Certificate under, of Advocato-General-Limitation :	A 162 N 2
'Judgmeot'-Order allowing appeal or application to be filed beyond	
time—If judgmeet	S5N41
Rules framed by High Court under-Whether special laws	
	S 29 N 6
Letters Patent Appeals	
—Applicability of S. 12	S 12 N 5
—Delay in filing—Excuse of	S5N4
Libel	
Compensation for-Suit for	
(a) Cause of action—In case of re-publication	A 24 N 1 A 24 N 1
(b) Exclusion of plaintiff from civil rights—Limitation (c) In respect of allegation by defendant in written information	A 24 N 1
laid before Magistrate that plaintiff is a woman of no charac.	
ter-Limitation	A 24 N 1
(d) In respect of written statement to police containing imputa-	
tion of having committed dacoity or other offences against	A 24 N 1
plaintiff—Limitation A	24; A 24 N 1
(f) Several plaintiffs iostituting suit within prescribed period—	22, 12 2
Subsequent amendment of plaint by striking out names of	
all plainliffs except one-Whether renders suit time-barred:	A 24 N 1
(g) Suit for defamation against police officer submitting report in	
compliance with order of Magistrate—Applicability of Art. 2	A 24 N 1
and Art. 24 (h) Suit, whether maintainable where there is no publication	A 21 N 1
License	•
—Meaning of	S 2 Cl 5 N 8
Licensee .	
-Profits received by, after period of license - Whether wrongfully	
received	A 100 N 2a
Lien	
Against property Enforcement of Suit for Limitation	7 80 N J
——Of Vendor	A 132 N 7
(a) Euforcement of Suit for Limitation	A 132 N
(b) Vendor leaving with vendee purchase money for payment of mortgage—Vendor, if has lien	A 132 N 7
Life-estate	
Remainderman	
(a) Cause of action accruing in lifetime of last full owner -	
Intervention of life-intorest, if interrupts running of limi-	S 9 N 10
(b) Suit by, for possession of estate—Remainderman, if gets fresh	
cause of action on termination of life-interest	S 9 N 10
Limitation	
	A 166 N 19
——Bar of	83N3
(a) Court's power to relieve litigant from	2272

imitation_Bar of_(Contd.)	
(b) Effect - Defence not barred - Plea of fraud not barred in	
defence, though suit for relief nn ground nf fraud may be	
time-barred	A 95 N 18
(c) Exemption from	
(i) Drawing out funds standing to credit of suit directed to be paid to a party, whether exempt from bar of	
	81 N 2 F N 4
(n) Suit against executor, whether and when exempt from	OI M Z I M 4
bar of limitation	A 123 N 8
Cause of action	
(a) Accruing in favour of one person—Another thereafter becom-	
ing entitled to sue on same cause of action-Latter, if	
entitled to fresh period of limitation from the time ho	
(b) Recurring cause of action—Suit against constructive trustee,	S 9 N 10
based on breach of constructive trust — Every fresh breach	
• • • • • • • • • • • • • • • • • • • •	S 10 N 28
spect of	
	S 9 N 10
by dif-	00110
ferent periods of limitation (e) Wheo arises—Illustrations	\$9N9 S9N7.8.9
—Cause of action accruing to estate of deceased person	5 5 11 1, 5, 5
(a) Administrator, suit by — Limitation cannot begin to run	
before grant of letters of administration	S 17 N 8
(b) "Capable of institutiog a suit" in S 17 - Meaning of-Pro-	21.110
bate or succession certificate not capable of being obtained	
—Effect of	S 17 N B
(c) Cause of action accruing before death of person - S. 17 will	S 17 N 4
not apply (d) Cause of action arising after coming into existence of legal	517 N 4
representativo—Limitation, if begins to run from time of	
coming into existence of legal representative	S 17 N 6
(e) Cause of action existing in favour of or against estate of	
deceased person as a resolt of death of such person-S 17,	
if applies	S 17 N 4
(f) Computation of period of limitation	S 17
(g) Death of creditor on day when debt becomes due - Starting	
point of limitation, if postponed	S 17 N 5
(h) Deceased person being Hindu, Mahomodan, Buddhist, Sikli, Jain or Indian Christian	
(1) Executor, if can institute suit before grant of probate	S 17 N 8
(ii) Fact that decree cannot be passed in suit for recovery	D 11 II O
of debt due to estate before grant of succession certi-	
ficate—Whether bars institution of suit	S 17 N 8
(iii) Suit, if can be brought on behalf of or against estate before grant of letters of administration	0.40.40.0
	S 17 N 8
(1) Executor—Surt by or against—Lamitation, if postponed till probate is obtained	S 17 N 8
(i) Legal representative must be competent to sue on the parti-	SHINS
cular cause which is in question	S 17 N 8
•	- 2. 2. 0

Limitation—Cause of action accruing to estate of deceased perso	n _ (Contd.)
(k) Letters of administration granted only to portion of estate-	
Cause of action relating to such portion-Limitation will	
postponed till grant of letters of administration in respe	
of it	S17 N 8
(1) Limitation to be postponed till there is some one who ca	
sue or be sued on behalf of estate	S17 N 2
(m) Pre-emption, suit for-Starting point, if postponed	S 17; S 17 N 2
(n) Provisions as to	311, 1311
(i) Exceptions in regard to certain suits	S17
(ii) Principle of S. 17	S 17 N 2
	S17 N S
(iii) Section 17 applies only to snits and applications	13.11.11.
	S17 N 6
making of total truth	
pable of institution	. S17 N 8
(a) Carle (and and and and and and and and and and	
(p) Suit for possession of hereditary office - Starting point,	S 17; S 17 N 2
postponed	
(q) Suit for possession of immovable proporty—Starting point,	11 C 17, C 17 M 9
postponed	S 17; S 17 N 3
Cause of action accruing to or against estate of deceased person-	S 17 N 8
Capacity to sue, meaning of	. 511140
—Computation of	
(a) Acknowledgment in respect of cause of action — Day of	S 13 N 3
acknowledgment to be oxcluded	
(b) Exclusion of date of indgment and time requisite for obtain	S 13 N 2
ing copy of decree, etc.	Ss 12 to 16
(d) Exclusion of time of defendant's absence from British India	•
(e) Exclusion of time of proceeding bona fide in Court without	5 14
jurisdiction	" 9 19
(i) Exclusion of time requisite for obtaining copies	. 813
(g) Mode of -First day to be excluded	•
(h) Period of notice of suit given in accordance with require	
meets of law to be excluded	S 15
t to su	•
	C 18 N 13
	er N 12
Date of	•
(i) anne to ne computed from using the cause of action.—Dato of	
which cause of action arises to be excluded	
(a) Court, if bound to raise and decide suo motu	S3 N 2
(b) Non-setting up of—Effect	83
D1-1 (
(a) 3 a 1 a 2 a 2 1 1 1 1 1 1 1 1 1 1 1 1 1 1	Preamble N 6
	Presmble NO
—: ! · · · · · · · · · · · · · · · · · ·	Preamble N 17
Exceptions	
(a) Acknowledgment of liability in writing-Fresh period of	
limitation to be computed from time when acknowledgment	
signed	S 19 S 20 N 35
(b) Burden of proof	S 18 N 7
(e) Burden of proof of facts bringing case within exceptions	9 19 14

Limitation—Exceptions—(Contd.)	
(d) Continuing breaches of contracts and continuing wrong	4.
independent of contract—Fresh period begins to jun ;	57
every moment of time during which breach or wron	
(e) Exception should be construed liberally	S 19 N 11
(f) Indulgence shown to surfers—Court is bound to give fu	0.10.37.4
effect to language in which that indulgence is conceded	. S 13 N 4
(g) Payment of interest as such or of part payment of princip	
of debt or legacy	S 20
(b) Person having right to sue kept by fraud from knowledge	
of right	S 18
(1) Person seeking exception on ground of fraud must specifical	
state particulars thereof	S 18 N 6
(1) Plaint stating ground on which exemption from har	is
claimed-Plaintiff, if can at the hearing rely on differen	
ground of exemption	S 19 N 77
(L) Plaintiff's ignorance of his right to sue, whether postpone	28
running of limitation	S 18 N 4
(i) Pleadings—Exception to be specifically pleaded .	S 14 N 30
	8 10
(n) Suit for possession by execution purchaser—Exclusion	
time of pendency of proceedings to set aside execution sale	e: S 16
Exceptions to bar of	
(a) Classified	86N2
(h) General	S9N6
(a) Illustrations	89N6
(d) Legal disability-See Legal disability.	
(e) On ground of fraud-Suit for relief on ground of fraud-	_
Whether exception applies	A 95 N 8
(f) Pendency of litigation between two claimants to an estate-	
Whether sufficient cause for delay in institution of suit for	
enforcement of right on behalf of or against estate	. 89N1
(g) Principle	0.031.0
(a) Case falling within reason of recognized exceptions,	ıf
	S3N3
	A 120 N 31
(c) Equitable considerations or bardship, if ground for granting	. S3N3
(d) The Crown as such, if entitled to	. S3N3
-Extension of	
(a) Grounds	
(1) The familiant I amon'm soul of second	. S3N3
(n)	
•	
	. S3N3
·	. S3N3
	S3N3
(v) Mere mistake on plaintiff's part as to date of cause of	
action, if ground	S3N3
(vi) Plaintiff prevented from suing in time by som	
arrangement or negotiation, if ground	S3N3
(vii) Time taken in obtaining permission of Governmen	
under S 86, Civil P. C., if ground	. S3N3

Limi	ation—Extension of—(Contd.)		
	(b) Limitation, if can be extended by agreement of parties denoral	•••	S 15 N 7
	(a) Admission of parties or counsel on point of limitation	, if	S 3 N 21
	(b) Agreement curtailing period of limitation provided in Ac	t-	
_	Validity (c) Agreement not to plead limitatioe—Validity	•••	S3N24 S3N24
ı	(a) Advisorment to extend united of Publishing Statistics		S 3 N 24
	•	• •	S 3 N 18
		.1	32; S 9 N 14
1	(g) Applicability of Act		C 0 N 07
	(i) Arbitration proceedings	•••	S 3 N 27
	(ii) Insolvency proceedings	•••	S 3 N 30
	(iii) Set-off and coonter-claim	•••	S 3 N 29
	(h) Burden of proof - Plaintiff to prove suit iostituted with	hin	
	time	•••	S 3 N 33
	(i) Cause of action		
	(1) Accruing after starting point specified in Article	9	
	Effect		89N8
	(ii) Fusion of interests of debtor and creditor-Effect of	1:	B 9 N 12
	(iii) Where cause of action has not arison limitation e		
			89N7
	(1) Cause of action same, limitation same	•••	S 2 C1 8 N 1
		•••	83 N 41
	(k) Coocurrent remedies, limitation for	***	
	(I) Conversion of proceedings—Effect	•••	S 3 N 33a
	(m) Court closed when limitation expires - Presentation on	re-	
	openiog day Sufficiency ·		S 4
	(o) Defence - Substantive right or in altereative that suit	is	
	1 1 11 1 1 - 1 - 1 - 1 - 1		S 3 N 16
		•••	
	(o) Determination of Articlo		
	(1) Facts found differing from those alloged-Limitation	n,	8388
	how determined	•••	SINS
	(ii) How determined	•••	00110
	(iii) Nature of claim to be decided with reference to su	D•	S3N6
	stance of claim	•••	50110
	(p) Determination of period - Decree of Native State Cou	rt	
	transferred to British Indian Court—Application for exec	u-	S3 N 8
	tion to latter Court—Limitation	• • •	2270
	(q) Duty of Court .		S3 N 16
			83 H 10
	atement -	_	S 3 N 16
		••	83 8 9
	(dismissed		13 0 1
	(ш	S 3 N 16
	notu	••	2011-10
	(v) Question of limitation one of law Court, if bound to	0	S 3 N 16
	raise it suo motu	:	50.11.0
	(vi) Question of limitation raising issues of fact not arisin	iii.	
	from plaint-Failure of defendant to raise-Court.	11	S 3 N 16
	- should allow question to be raised	••	
	-		

nitation-General-Duty of Court-(Contd.)	
(vii) Suit barred—Limitation not set up as defence — Suit,	
if to be dismissed S 3 N 1	n
(viii) To dismiss time-barred proceedings S	
(r) Effect of har	•
(1) Limitation bars remedy but does not destroy right	
Preamble N 27; S 3 N 1	4
(ii) Several debts owed — Payment, if can be adjusted	
towards time-barred debt S3N1	.4
(m) Suit for recovery of dobt barred — Debtor paying to creditor—Amount, if can be claimed back S 3 N 1	
(iv) Suit to enforce right barred — Defence based on right,	.4
if barred S3 N 1	4
(v) Time barred debt, if valid consideration for transfer of	-
property S 3 N 1	4
(vi) Time-harred doht of Hindu father - Son, if under	
pious obligation to pay S3 N 1	
(vii) Time-barred debt, undertaking to pay, if binding S 3 N 1	
(s) Estoppel—There can be no estoppel against statute S 3 N 2	15
(t) Extension of time — Successful party should not be lightly denrived of vested right	
(u) Limitation does not bar defence	.0
elaim through him S 2 Cl 8 N	1
(w) New plea as to, when can be raised 83 N1	
(x) Plaint returned for re-presentation -Re-presentation, if only	
continuation of suit—Limitation, if affected S 3 N 3	2
(y) Plea of	
(1) Abandonment of Effect S 3 N 17, 2	
(u) Doctrine of res judicata, if applies	
(z) Power of Court—S. 3, if fetters power of Court to allow suit	,,,
to be withdrawn S3 N	9
(z1) Principle allowing presentation on re-opening day when	
period expires on holiday—Whethor alters or modifies length	_
of prescribed period	
(z²) Repeal of statute—Effect of S 9 N 1 (z³) Right barred under existing law—Subsequent coming into	.5
force of enactment providing longer period of limitation for	
similar cases—Barred right, if revives S 6 N	4
(z4) Separate and independent period of limitation applies to each	•
distinct cause of action S9 N	2
-Institution of suit, appeal or application after period prescribed by	
First Schedule of Act—Effect S3, S3 N —Law governing—Lex for: S1 N	
—Law governing—Lex for: S 11 N —Law of	1
(a) Alteration during pendency of proceeding Preamble N 2	20
(b) If affects substantive rights of parties Preamble N	
(c) If creates obligation to suo where none exists Preamble N 2	
(d) Reason and object of Preamble N	4
—Period prescribed	_
(a) Meaning of expression S 14 N 9, S 15 N (b) Twelve years' period under Civil P C, S. 48, whether period	3
prescribed within meaning of Limitation Act S 15 N 3; S 18 N 1	5
Lam. 183	

Limitation_(Contd.)	
Personal actions-Limitation bars only remedy and does not	
extinguish right itself	S 28 N 1
—Plea pf	5 20 11 1
(a) Defendant succeeding on technical plea—Whether will be	
considered in passing order as to costs	S 3 N 39
(b) If technical	S 3 N 39
-Residuary Article of, for suit for which no limitation is provided	501.00
elsewhere in first schedule-Art. 120	A 120
-Starting point	
(a) Knowledge of facts giving rise to cause of action, whether	
necessary to start time runuing	A 120 N 3
(b) Postponement of	
(i) Cause of action accruing to estate of deceased person	S 17 N 2
(ii) Payment of interest as such or part payment of prin.	
cipal—Fresh period to be computed from time of	
payment	S 20
Statutes of _Retrospective effect	S 6 N 4
-Suit for dispossession-Right barred by limitation-Effect is	
extinction of owner's title in favour of party in possession	S 28 N 1, 2
Suit for possession-Law of limitation is law of prescription	S 28 N 1
Suit for possession of property_Bar of remedy extinguishes right:	5 25 N 1
—Suspension of	
(a) Agreement to refer dispute to arbitration—Whether puts an	
end to cause of action	59N 13
(b) Cause of action satisfied or discharged	
(i) Limitation, stopping of, in regard to such cause of	
action	89N11
(ii) Nullified by subsequent ovents-Plaintiff entitled to	
fresh period in respect of such cause of action	g 9 N 11
(c) Defendant absent from British India not at commencement	
of limitation but subsequently-Plaintiff, if entitled to the	
oxclusion of time under S. 13	89N3
(d) Fraud of defendant committed after start of limitation-	
Delay due to such fraud-Whether running of time is	S 18 N 2
interrupted	S 14 N 4
(e) It can be suspended un ground of principles outside the Act:	214 11 2
(f) Initial disability or inability to sue-Whether will prevent	59N3
running of limitation	002
(g) Limitation beginning to ron—Subsequent disability, or inability to sue, if can stop running of time	S 9
inability to sue, if can stop running uf time (b) Principles	S 9 N 2
(i) Proceeding lona fide in Court without juris-	
diction-Limitation, if suspended during period of such	
proceeding	S 14 N 4
Limitation Act (9 of 1908)	NIFN6
- Trinchaller of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of	211 1 2 -
—Applicability	
(a) Act applies only to institution of snits and has no application	A 12 N 3
to defence set up by defeudant (b) Application for execution of decree of Nativo Indian State in	
	S 11 N 3
(c) Application not falling under any of the Articles	amble N 31
(c) approached not saiding under may of the firefer.	

Limitation Act-Applicability-(Contd.)				
(d) Application to Collector in land		matter	Pron	mble N 31
6-3 A 35 - 4 45	icquisicion	HILLOUI		nble N 35
(f) Criminal proceedings		•		mble N 32
(g) Damdupat, rule of—If affected	•			mble N 32
(h) Extent and applicability of gene		ma of Also A		11010 IA 99
(n) Extent and applicability of gene	rai provisio	ons of the v	et to	C 00 N 1
periods prescribed by special or	local laws		 D	S 29 N 1
•				mble N 31
'				mble N 36
Divorce Act Act, if applies		not governe	ea by	C 00 M P
Divorce Act—Act, it applies				S 29 N 7
(1) Suits instituted in British India	on contract	ts entered in		C 11 N .
a foreign country	1 To:		00 M P	S 11 N 1
(m) To appeals from decrees in suits	under Dive	rce Act 5	20 N 7, 1	A 161 N 2
(n) To suits under Divorce Act	; a	~~ ₂₀ S	29 N 7;	A 151 N 2
	1	20	• • •	V 104 IV T
_	•, :			A 28 N 1.
		', A]		
Commencement of operation	•••	•••	***	\$1
'Consolidate and amend', meaning of	•••	•••	Pread	mble N 29
Extent of operation			•••	81
Hustory of	***	***	Pre	amble N 2
If exhanstive		•••		mble N 80
	•••	•	r rea	mule W 90
-Interpretation of			-	11
(a) Acts in pari materia, if can be ed	onsidered	•••		mble N 18
(b) Article applicable—Test to find				mble N 24
(c) Articles in Sch. 1 must be read			•••	S 23 N 1
(d) Articles, meaning of other Articl				mble N 22
(e) Civil Procedure Code, if aid in c		• •		mble N 18
(f) Columns of Schedule to be read		•		mble N 25
(g) Construction in favour of right (mble N 21
(h) Exceptions to bar of limitation— (i) Exceptions to statute—Mode of				S 19 N 11
	i interpreta	stion—run	епест	0 10 31 4
to be given to exceptions (1) Harmonious and consistent cons				S 13 N 4
	truction of	bro atstotta' r		L1 - 37 00
sity of (k) More than one provision applica	ble Effect	105		mble N 20 mble N 24
(1) Repugnancy between a particula	r Article o	~1 G D3 V		mme M 24
will not prevail	it intilicité a	na 15 20-15	II bidio	S 23 N 1
(m) Residuary Article, applicability	of ·	• •	Progr	mble N 23
(n) Retrospective effect	01	•	1100	mole N 25
. () 15 3 5 4 4 6 4	f			S 0 N 15
(ii) Repeal of statute, effect of S.	10 nara 9	•••	• •	S 9 N 15 S 10 N 25
			Prop	mble N 26
	•••			
(p) Sections, if control Articles (q) Special Article and general Artic	cle—Which	prevails	Pren	mble N 94
(r) Technical terms, cognate or con-	temporary (enactments.		11 21
be referred to				mble N 19
Object of				- DIO 14 10
(a) If creates or defines cause of act	ion	•••		S3N2
(h) If only interposes har to enforce		ght	•••	S3 N 2
Operation of		_	-	
(a) Custom, if can override positive	กกางเรเการ	of Act	•••	S 26 N 21
ta) omitoni il cun oterrino positivo	1.20.10000		•••	D 20 R 21

Limitation Act-Operation of-(Contd.)				
(b) If affects S. 25, Contract Act	•••	***		S 29
(c) Postponoment, object of	•••	•••	***	S1N2
Provisions of Whether affected by C	onrt-fees Act		•••	A 173 N 6
-Ropealed enactment				
(a) Prior Act keeping alive provision	ns of oarlior	Act repeal	ed—	
Earlier Act, if kept in force	***	***	Pro	camble N 26
(b) Suit barred under	•••		Pre	eamble N 26
(c) Suit in time under-Shorter tor	m under nov	w Act		eamble N 26
(d) Suit in time under old Act but	barred by	now Act w		
comes into force at onen		•••		eamble N 26
(e) Suit in time under ald Act but I		now Act-		
Act coming into force in future	***	***	Pro	camble N 26
-Retrospective effect	•••	•••	•••	S 6 N 4
(a) Amending Act introducing shorte	er period	•••		eamble N 26 reamble N 3
Scope of	•••	***	P	termoto M 9
Liquidator				
Suit by-For monoy due in respect		ılls—Limita	tion	
where case is not governed by Art. 11	12	A 12	0 N 30	; A 112 N 2
Lis pendens				
Dectrine of Whether applies to pre-c	motion suits		•••	A 10 N 15
Loans				
-Advance of				
(a) And sale of goods—Account cons	isting of adva	inces of load	n on	
one side and sale of goods en				
such account—Suit for—Limits		•••	•••	A 85 N 8
(b) Repayments in discharge of B	alance due	on-Suit fo	or—	
Limitation	***	•••		A 85 N 4
And agencyAccount consisting of ac	lvances of lo	an en ene	sido	
and agency on the other-Balanco du		count—Suit		A 85 N 5
—Limitation	•••	• • •	•••	1 60 11 0
(a) Distinguished				A 60 N 2
(b) Presumption as to, in transact	ion between	customer	hnn	-
banker	ou between	- customic	***	A 60 N 5
(c) Presumption as to, where question	n arises who	hor transac	tion	
is loan or deposit	***		***	A 60 N 5
-By each party to the other-Account	consisting of	i—Balanco		A 85 N 10
nn-Suit on-Limitation	***	•••		A 59 N 4
Interest on, whether loan	•••	•••	•••	A 59 N 3
Necessary parties to		··•	.***	V 99 IV 9
(a) Same person acting as agent to	twn princi	pals and us	ang	
money of one for benefit nf anot	nor-Wheth	or Gives tra		A 59 N 3
loanRecovery of Suit for, against debtor p	orgonallyT	imitation	А	120 N 41:
	crsountry — r	JIMINGA COLI		A 57 N 1
Lecal nutherity				
- Suit by, for possession of road or street				
(a) Essentials of applicability of Art.	1467		A	146A N 2
(b) For possession of Crown lands e	ntrusted to	local author	îty	
for management-Limitation a	pplicable, wh	icther same	8.5	A 146 N 4
applicable to suit by local autho	rity for posse	ession of road	1	

Local authority-Suit by, for possession of road or street-(Conto	ł.)
(c) Limitation	A 146A
(d) Right of municipality, if extinguished by virtue of S. 28, if suit for possession is barred under Art. 146A	A 146A N 6
(e) Road, whether must be formed by local authority on lands	
belonging to or acquired by it in proprietary right for appli-	
cability of Art. 146A to such suit (f) Suit by private person for ejecting another private person	A 146A N 4
from field which has been recorded as part of thoroughfare	
and shamilat. 1. deh—Limitation applicable, whether same as	. 1101 27 0
applicable to suit by local antbority for possession of road What is — Local Government, whether local authority within	
Art. 146A whether local authority within	
Local Government	
	A 146A N 3
Lodging	
-Price of Suit for	
(a) Limitation—Starting point (b) Suit for rent from tenant—Limitation	A 9, A 9 N 2 A 9 N 1
Lanatic	11 0 11 1
—Acknowledgment or payment by guardian of insane person —	
Effect of	S 21 N 4
Madras City Civil Court	
Decree or order of Appeal from, to High Court Limitation	A 151 N 2
Madras Estates Land Act	
——Suit for rent under (a) Limitation.	A 110 N 5
(b) Suit based on registered lease deed-Whether special period	
of limitation under Madras Estates Land Act overrides provisions of Limitation Act for suit for compensation for	
breach of registered contract	A 116 N 8
-Section 179-Suit for declaration of plaintiff's right upon entry	
made in Record of Rights (a) Denial by defendant of plaintiff's title before date of entry	
to plaintiff's knowledge-Whether bars plaintiff's suit for	
declaration of right (b) Limitation—Starting point	A 120 N 50 A 120 N 50
(b) Limitation—Starting point	A 120 11 00
-Rule 356-Power of Single Judge sitting in admission Court to	
excuse delay in filing appeal whether from Original Side or	
mofussil Court	S 5 N 46
Mahomedan —Suit by Mahomedan entitled to possession on death of Mahomedan	
Suit by Manomedan entitled to possession on death of Manomedan female	
	A 141 N 2
(b) Essentials of applicability of Art. 141 (c) Limitation—Starting point	A 141 N 2 11, A 141 N 2
-Suit for share of wife's property in possession of another sharer	•
-Limitation	A 127 N 4

2916 GENERA	IL INDEX		
Limitation Act-Operation of-(Contd.)		
(b) If affects S. 25, Contract Act			8 29
(c) Postponement, object of		••	0 4 37 0
- Provisions of-Whother affected by	Court-fees Act .		4 - 50 17 0
Repealed enactment			
(a) Prior Act keeping alive provision	ons of earlier A	ct repealed-	
Earlier Act, if kept in force			Preamble N 26
(b) Suit barred under			Preamble N 26
(c) Suit in time under—Sharter to (d) Suit in time under ald Act bu			Preamble N 26
comes into force at nnce	t narrou by na		Preamble N 26
(e) Suit in time under nld Act but	harred under n		
Act coming into force in future			Preamble N 26
Retrospective effect			S 6 N 4
(a) Amending Act introducing short	ter period .	I	Preamble N 26
——Scope of	•••	•	Preamble N 3
Liquidator			
Suit by-For money due in respect		-Limitation	
where case is not governed by Art. 1	.12	A 120 N	30; A 112 N 2
Lis pendens			
Doctrine ofWhether opplies to pro-	emption suits .		A 10 N 15
Loans			
Advance of			
(a) And sale of goods—Account con-			
one side and sale of goods on such account—Suit for—Limit		lanco duo on	A 85 N 8
(b) Repayments in discharge nf—		_Suit for_	1 00 1. 0
Limitation	***		A 85 N 4
-And ogency-Account consisting of a	dvances of loan	on one side	
and agency on the other—Balance d	ue on such occor	ant—Suit for	A 85 N 5
-Limitation	•••	• •••	A DO M
And deposit (a) Distinguished			A GO N 2
(b) Presumption as to, in transac		istomer and	
hanker			A 60 N 5
(c) Presumption as to, where question	on, arises whethe	rtransaction	A 60 N 5
is loan or deposit	**		V 00 14 0
By each party tn the other-Account	consisting of-	Dalance and	A 85 N 10
Interest on, whether loan	•••		A 59 N 4
Necessary parties to			A 59 N 3
(a) Same person acting as agent (to two principal	s and using	
money of onn for benefit of and	thor-Whether	gives rise to	A 59 N 3
loan	т.	itation	A 120 N 41;
Recovery of-Suit for, against dabtor	personally—Lin	intation	A 57 N 4
Local nuthority			
- Suit by, for possession of road or street	t		9
(a) Essentials of applicability of Art	. 116.\		A 146A N 2
(b) For possession of Crown lands	entrusted to loc	at authority	
for management—Limitation applicable to suit by local auth	ority for mesessi	on of road	A 116 N 1
will are not of part of recent mann			

Local authority-Suit by, for possession	of road or	street_(C	ontd.)	ŧ	
(c) Limitation (d) Right of municipality, if extingui			•••	A	146A
suit for possession is barred and				A 146A	NS
(c) Road, whether must be formed	by local aut	hority on la	nds		
belonging to or acquired by it in	proprietary	right for ap			NT 4
cability of Art. 146A to such su (i) Suit by private person for eject	it ing another	nriveta ne	···	A 146A	N 4
from field which has been record	ded as part	of thorough	fare		
and shamilat-i-deh—Limitation					
applicable to suit by local autho What is — Local Government, whet				A 146A	. N 3
Art. 146A whet		wit		A 146A	N 3
Local Government					
Suit by-Limitation	•••	•••	•••	A 146A	N 3
Lodging					
-Price of-Suit for				0 4 0	NT O
(a) Limitation—Starting point (b) Suit for rent from tenant—Limit	etion	•••	A	9, A 9 A 9	
Lunatic		•••	•••		
-Acknowledgment or payment by gu	ardian of ir	sana nerson	_		
Effect of	***		•••	S 21	N 4
Madras City Civil Court					
Decree or order of-Appeal from, to Hi	gh Conrt-I	imitation	•••	A 151	N 2
Madras Estates Land Act					
-Suit for rent under					
(a) Limitation (b) Suit based on registered lease dee	a"TUL atha	· ·		A 110	N 5
of limitation under Madras Es	states Land	Act overr	des		
provisions of Limitation Act for	or suit for c	ompensation	for		
breach of registered contract	***	***	. •	A 116	NB
Section 179Suit for declaration of p	plaintin a ri	gat upon en	try		
(a) Denial by defendant of plaintiff'	s title befor	o date of en	try		
to plaintiff's knowledge—Whetl		ıntıff's suit	for	. 100 1	T =0
declaration of right (b) Limitation—Starting point	•••			A 120 I A 120 I	
Madras High Court Original Side Rules	•••	• •			
—Rule 356—Power of Single Judge sit	ting m adm	ission Court	to		
excuse delay in filing appeal wheth	er from O	riginal Side	or		
mofussil Court	•••	• •	•••	S 5 1	N 46
Mahomedan					
——Suit by Mahomedan entitled to possess female	non on death	of Mahome	nan		
(a) Cause of action—When accrues				A 141	
(b) Essentials of applicability of Art				A 141	
(c) Limitation—Starting point ——Suit for share of wife's property in p				Α 141	N 2
-Limitation property in p	OSSESSION OF		rer	A 127	N 4

Mahomedan Law	
——Co-hoirs	
(a) Acknowledgment by one of the en-heirs-Whether saves	
limitation as against any other co-heir	S 21 N 10
(h) Decree passed jointly in favour of saveral co-heirs—One of	
them, if can give discharge in respect of decree on behalf of	
all	S 7 N 15
(c) Each co-heir, if bound to pay only a proportionate share of	
deht of the deceased	S 21 N 10
(d) Payment by one cn-linir-Whether saves limitation against	
other heirs, under S. 20	S 21 N 10
(e) Suit by one co-heir to recover debt due to estate of deceased	
- Other co.heir added after period of limitation-Whole	
suit, if becomes barred	S 22 N 5
(f) Whether joint contractors within the meaning of S. 21	S 21 N 10
(g) Whether persons jointly antitled to sue within S. 7	S 7 N 23
Dower-See Dower.	
Head of Mahomedan family-Whether can make acknowledgment	
or payment on behalf of whole family	S 21 N 22
—Religious or charitable endowment — Property comprised in— Whether property vested in trust for specific purpose	S 10
Whether property vested in trust for specific purpose	
Maintenance	
-Allowance charged on immovable property-Enforcement of-	
Suit for-Limitation	A 132 N 8
(a) By Hindu	Λ 129
(h) By Hindu widow—Limitation applicable	A 132 N 8
(a) Grant of arreage exhatles another in this discretion of	
A 15	8 & 129 N 5
(2) Touristing Counting point	29 L 129 N 3
(e) When can be claimed A 19	9 & 120 N 6
(f) Whomeful withhelding of maintenance Whother recessory	
for maintaining claim to arrears of maintenance A 15	29 L 129 N 5
Right to	
Clark the transfer of the Timitation	
applicable A 12	3 & 120 N 6
(b) Suit for declaration by Hindu-Limitation	V 155
XX 121 attention to condition to the contract of the barrows	
under Arts, 128 and 129 A 19	28 a 129 N 7
——Suit for	7
	29 & 120 % 7
(b) By Hindu—"By a Hindu"—Meaning of A 1	28 & 129 N 4 28 & 129 N 4
(c) By Mahomedan—Limitation A 1:	28 % 125 11 2
(d) By member of Malabar tarwad-Limitation applicable, whe-	
ther same as applicable to suit for share in joint family	$\Lambda/127~\mathrm{N}/13$
property	23 a 129 N 4
A 16	19 A 199 N U
	14 (122 7)
	A 123 N 9
(h) Maintenance allowance granted by teststor—Limitation	
(i) Maintenance made a charge on immuvable property—Suit to	3 & 123 N 2
coforce charge—Limitation A 15 (1) Suit based on contract—Limitation A 15	9 & 129 N 2
th care exten on courts, t-thungaring ***	

Maintenance—(Contd.)	
Suit to enforce maintenanco	
S. 28	. S 28 N 3
Malabar Law	
	24 N 14 F N 2
	A 108 N 1 t A 108 N 1 A 110 N 8 S 14 N 18 t X N 14 F N 11
-Stan:-Suit by, for recovery of Decaswom and its properties-	
Limitation	. A 124 N 2 Cl 8 N 6 F N 1
(a) Acknowledgment or payment by manager in respect of habi	
lities binding on tarwad-Whether binds whole tarwad	
(b) Arrears of maintenance due and payable to junior member	
—Suit by auction-purchaser or assignce, under privat treaty for such arrears—Limitation	e . A 120 N 28
(c) Different branches of—Suit between, for recovery of share	
of one branch becoming extinct—Limitation	
(d) Karnavan—Alienation by	
 Suit by junior member for declaration that alienation is not binding on tarwad — Limitation — Starting 	
point Himitation — Starting	. A 120 N 36
(ii) Suit by member of tarwad for recovery of property	
alienated—Limitation	. A 91 N 8
(iii) Suit by member of tarwad to declare that alienation in not binding on him—Limitation	s A 91 N 8
(iv) Suit by minor for setting aside—Limitation .	
(e) Kamavan and adult male members—Capacity to give dis	
charge in respect of causes of action accruing in favour of tarwad (f) Money belonging to tarwad received by jumor member—	. S7N21
Suit by karnavan for recovery—Limitation	A 62 N 31
(g) Suit by member for maintenance or arrears thereof—Limi	
tation	. A 127 N 13
Malfeasance	
Compensation for-See under Compensation.	
Meaning of	. A 36 N 1
Malicions prosecution	
And false imprisonment, distinction between	. A 19 N 1
	•

Mallcious prosecution—(Contd.)	
Compensation for-Suit for	
(a) Against joint tortfeasors-Snit barred against one, whether	
barred against all	A 23 N 6
(b) Against Municipality-Limitation-Applicability of Art. 2	
and Art. 23	A 23 N 7
(c) Against Municipality by person who was prosecuted by	11 20 11 1
Municipality for alleged infringement of some provision of	
Bombay Municipal Boroughs Act—Limitation	A 23 N 7
(3) 4 1	A 23 N 2
	A 23 N 1
(f) Limitation	A 23
(i) Starting point — "Whon prosecution is otherwise	11 20
terminated"—Prosecution, when and how terminates	
	A 23 N 7
in order to start time running	2 20 11
(ii) Starting point, where ease prosecuted is one in which	A 23 N 3
plaintiff is acquitted	A 20 R 0
(iii) Starting point, where order of discharge is set aside by	
District Magistrate under Criminal P. C., S. 437 but	
High Court in revision sets aside order of District	
Magistrate on ground that order of trial Court is	A 23 N 3
really one of acquittal	A SO II O
(iv) Starting point, whore proceedings complained of tormi-	A 23 N 1
nato in acquittal of plaintiff	W 20 W T
(v) Starting point, where revision petition has been pro-	
sented against acquittal of plaintiff in prosecution	A 23 N 8
complained of	1 20 11 0
(g) Proof that proceedings complained of terminated in plain-	
till's favour-Whether essential for maintainability of suit	A 23 N I
for malicious prosecution	A 20 21 -
(h) Suit for damages for malicious prosecution in case of laying	A 23 N 4
of information before police—Maintainability	A 19 N 1
—Meaning of	W 10 14 T
Whether actionable wrong	A 23 N I
Mallkana	
Arroara of Cuts to-	
(a) Limit-ti-m	A 132 N 20
(b) When I is time I	
	A 115 N 5
Y	132 N 20
	141 N 11
	1 121 1
Right to	120 N 39
	A 131 N 4
	.1 101 2
Mamlatdars' Courts Act	
Order under, respecting possession of immovable property	
(a) Jurisdiction to pass such order	A 47 N 5
(b) Order, when within Art. 47	A 47 N 6
(c) Suit for recovery	
(i) Art. 17. Limitation Act, and local ar special law,	A 47 N B
applicability of	A 47 A 6
(ii) By person bound by order—Limitation	., .,

		GENLICAL	INDEX				292
Mamlatdars Coupproperty—Su	rts Act—O	rder under very—(Cont	, respecti d.)	ng possessi	lo aoi	immoy	able
(iii) B ₃	person ela	iming under	one bound	by nrder-Y	When		
11	naintamable					A 47	N 4
(iv) "I	Date of final	order"-Wh	at is		•••	A 47	
(v) De	fendant not	party to suit	in which	order was n	assed		
	-Effect of					A 47	N 3a
(v1) E	sentially on	o in ejectmen	ıt			A 47	
(vii) Es	sentials of a	pplicability of	f Art. 47			A 47	
(vin) L ₁	mitation—S	tarting point				A 47	
(ix) Pe	rsan not bo	und by nrde	, whether	must bring	such		
		mitation pres				A 47	N 3
		to property			d by		
lı lı	is failure to	sue within	limitation	under Art.	47 if		
		has not bee				A 47 1	N 10
(xi) Pe	rson's right	to property	. whether	extinguishe	d by		
7	irtue of S.	28 by failure	to bring	such suit w	ıtbin		
		nder Art. 47				A 47 I	N 10
(xiı) Pl	amtiff, when	n can bring s	uch suit w	thin Art 47		A 47	
(xii) Pl	aintiff, whe	ther must h	ave existin	g right to s	ue in		
е	jectment on	date of order	for applie	ability of Art	. 47	A 47	N 2
(117) Re	covery of pr	coperty-Mes	ning of			A 47	
(xv) Su	ch suit and	suit under S	nectfic Reli	ef Act. S. 9.	dıs.		
t	inguished				•••	A 47	N 2
(d) Suit for s	setting aside	-Limitation		•••		A 14	N 5
(e) When bi	nding on a r	nerson		•••	•••	A 47	
Marriage	-						
-Dissolution of-	-Suit for						
(a) Suit not	governed	by Indian	Divorce A	ct-Limitatı	on—		
Startin	g noint	٠.				A 120 1	147
(b) Suit und	ler Indian I	Divorce Act -	- Limitati	on Act, who	etber		
applies				•••		A 120 N	147
Martial Law Ordi	inanee						
	1 71.	41 T	·			S 5	N 4
_				apply		B 29	
_				-1-1-3		S 29	
Matrimony					•••	- 40	
Matrimonial j	nmediation						
(a) Whatha	e maludad s	n original jur	rediction of	Chartered 1	High		
Courts		i digmai jai	45diction o	Onatiereu .	Light	A 162	NJ.#
		original inti	Atetion of	High Const	•••	A 151	NO
Maxims	· memaca	ga-g 3		ANDE COURT	• •	11 101	., 5
Actio personal	· moretur e	um nercana	(A narrona	1 maht of n	tion		
dies with the		um personu	(A persona	a right of m		2018	NT O
-Actus curiae	neminem ar		not of the	Conrt chall		2010	N Z
judice no mai	n)	S	1 N 9 S 5	N 99 A 166	N 7	189 N	95
Certum est qu	od certum r	eddi potest	That is ce	rtain which	een	1 102 14	20
be rendered o	ertain)					A 113 1	N 7
Cessante ration	ne legis cesso	nte lex (The	reason of	the law cens	ing.		
the law itself	ceases)					S 12 1	N 7
Contra non va	lentem agere	nulla curri	praescrip	tro (Preserin	tion	~ ~ ~ .	
does not run	against a pai	rty under dis	ability nr v	whn is unabl	e to		
act)	·					A 141 1	N 2

Maxims—(Contd.)	
-Expressum facit cessare tacitum (What is expressed makes what	
is silent to cease) A 149 N	3
- Generalia specialibus non derogant (General words do not derogate	
from special) S 14 N 8; S 29 N 3; A 2 N 3; A 61 N	2
-Ignorantia juris hand excusat (Ignorance of law does not excuse): A 96 N	
-Ignorantia legis neminem excusat (Ignorance of law excuses no	
one) A 96 N	3
-Interest respublica ut sit finis litium (It concerns the State that	
there be an end to law suits) S 23 N	7
-Lex no cogit ad impossibilia (The law forces not to impossibi-	
lities) S4N	2
Nec vi nec clam nec precario (Neither by force nor clandestinely	_
nor by permission, i. c. peaceably, openly and as of right) S 26 N	3
-Nulleim tempus aut ocurrit regs (No time or place affects the King	_
or the rights of the Crown) A 149 N	3
-Qui sentit commodum sentire debet et onus (He who receives the	
advantage ought to suffer the burden) A 99 N	3
Sic uters two ut alienum non lacdas (Use your own property in	_
such a manner as not to injure that of another) S 2 Cl 5 N	1
Tantum prescriptum quantum possessum' A 142 & 144 N 5	3
Mesne profits	
Ascertainment of	
(a) Application for	_
(i) Limitation A 181 N 1	7
(n) Not an application for execution A 182 N 1	4
(b) Application for, after award of such profits — Limitation —	
Starting point A 109 N 1	7
(c) Application for, in Madras High Court-Limitation A 181 N 1	•
(d) Claim for ascertainment, whether limited to profits within three years before date of application. A 109 N 13	1
three years before date of application A 109 N 1.	•
(a) Asked in suit for recovery of possession — How far main-)
(b) Claim and and fault is suit for account of pages size in first	
instance—Subsequent amendment by prayer—Effect of A 109 N 10)
—Tuture mesne profits	
(a) Decree silent as to period for which it can be claimed-	
Claim for such profits after three years of decree - Appli-	
suit	
(b) a cried for which such profits can be granted	
—Suit for	
(a) Against person in wrongful possession of property — Order	
staying delivery of possession in court auction purchasor of	
sume property purchased by him — Whether amounts to injunction preventing institution of suit g 15 N 6	
a suit for possession 59 N 11	
(c) Discharge-Manager of joint Hindu family-Capacity of, to S 7 N 16	
rivo discharge	
(d) For period between date of institution of suit and date of	
Obtaining ejectment decree against defeodant - Defendant	

Mesne profits—Suit for—(Contd.)	
receiving no profits during such period - Claim for mesne	
profits, whether essentially one for damages for trespass upon	
immovable property	A 39 N 3
 (e) Mesne profits wrongfully received by defendant—Limitation; (f) Period during which prior suit by plaintiff for possession was 	A 120 N 2
pending —Whether can be excluded in computing period of	
limitation	S 9 N 6
(g) Profits pendente lite and also inture mesne profits from date	
of decree up to delivery of possession not granted by Court	A 109 N 10
—Sub-sequent suit for such profits, if barred — Limitation: (h) Purchaser at execution sale put in possession — Sale set	A 109 N 10
aside on ground of fraud-Suit by judgment-debtor against	
purchaser for mesne profits-Article applicable for suit	S 9 N 8
Suit for possession decreed - Subsequent suit for mesne profits	
te profits by way	
for restitution is	S 14 N 20
Minor	0 14 11 20
-Acknowledgment by minor-Whether available against him	S 19 N 69
—Acknowledgment or payment by de facto guardian of minor who is	5 15 11 02
not his legal guardian—Whether binding on minor under S. 21:	S 21 N 8
-Acknowledgment or payment by gnardian after ward's death-	
Whether binding on ward's estate	S 21 N 3
——Acknowledgment or payment by guardian of minor on his behalf— Whether hinding on minor	S 21 N 3
	D 21 N 2
 Acknowledgment or payment by guardian of minor — Whether effective irrespective of the question of its heing for minor's 	
benefit	S 21 N 3
-Acknowledgment or payment by lawful guardian - Natural	
gnardian of minor, if lawful guardian	S 21 N 3
——Age of majority	
(a) Capacity to act in matters of marriage, dower, divorce and adoption—Majority, when attained	S 6 N 24
(b) Guardian appointed for person or property of minor or Court	50112
of Wards assuming superintendence over his property-Age	
of majority, when attained	S 6 N 24 S 6 N 24
(c) When attained	D 0 14 29
(a) But for possession of property alienated after attaining	
majority-Limitation	A 91 N 18
(b) Whether binding against minor	A 91 N 15
Alienation of minor's property by guardian-Failure to sue to set	
aside alienation within time prescribed—Whether extinguishes his right to the property	S 28 N 3
Appeal by or against—When preferred	S3N 6
-Assignee from-Whether can claim extension of time on ground of	2211
disability of assignor	S 6 N 40
Certificate of guardianship granted to two persons jointly-Ac-	
knowledgment by one of them alone—Whether and when hinding	C 01 N c

Maxims_(Contd.)	
- Expressum facit cessare tacitum (What is expressed makes what	
is silent to cease)	A 149 N
Generalia specialibus non derogant (General words do not derogate from special) S 14 N 8, S 29 N 3; A 2 N	9 A 61 N
Ifom special S14 N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If N 8, 5 29 N 3; A 2 N 3. If	A 96 N
- Ignorantia legis neminem excusat (Ignorance of law excuses no	
one)	A 96 N
- Interest respublice at sit finis litium (It concerns the State that there be an end to law suits)	S 23 N
-Lex no cogit ad impossibilia (The law forces not to impossibilia	D 20 IV
lities)	S 4 N :
-Nec vi nec clam nec precario (Neither by force nor clandestinely	S 26 N
nor by permission, i. e. peaceably, openly and as of right) Nulleum tempus aut occurrit regi (No time or place affects the King	יאוטגמ
or the rights of the Grown)	A 149 N
-Qui sentit commodum sentire debet et onus (He who receives the	
advantage ought to suffer the burden)	A 99 N 3
such a manner as not to injure that of another)	8 2 Cl 5 N
'Tantum prescriptum quantum possessum' A 14	2 & 144 N 5
Mesne profits	
Ascertainment of	
(a) Application for (i) Limitation	A 181 N 17
(ii) Not an application for execution	A 182 N 14
(b) Application for, after award of such profits - Limitation -	A 109 N 11
Starting point (c) Application for, in Madras High Court—Limitation	A 181 N 17
(d) Claim for ascertainment, whether limited to profits within	
three years before date of application	A 109 N 11
—Claim for (a) Asked in suit for recovery of possession — How far main.	
tainable	A 109 N 10
(b) Claim not put forth in suit for recovery of possession in first	A 109 N 10
instance—Subsequent amendment by prayer—Effect of —Future mesne profits	
(a) Decree silent as to period for which it can be claimed-	
Claim for such profits after three years of decree — Appli- cant referred to fresh suit — Limitation applicable for such	
suit	A 109 N 11
(b) Period for which such profits can be granted	A 109 N 11
——Suit for (a) Against person in wrangful possession of property — Order	
staying delivery of possession to court auction purchaser of	
same property purchased by him — Whether amounts to	S 15 N 6
injunction preventing institution of suit (b) Cause of action, if suspended by institution by plaintiff of	er o at 11
a suit for nessession	S 9 N 11
(c) Discharge—Manager of point Hindu family—Capacity of, to give discharge	S 7 N 16
(d) For period between date of institution of suit and date of	
obtaining ejectment decree against defendant — Defendant	

Minor_(Contd.)	
—Right to sue vested jointly in minor and adult—Guardian for minor appronted by Court—Adult, if can give discharge witbout concurrence of guardian	S 7 N 29
- Suit against - Minor wrongly described as major and impleaded as	
defendant-Subsequent discovery of mistake and appointment of	
guardian-Minor is a party from the very beginning notwith-	
standing the defect of non-representation	S 22 N 8
——Sut by	
(a) After attaining majority, for profits of immovable property received by defendant—Limitation—S. 6, Limitation Act,	
whether applies	A 109 N 9
(h) Against guardian for specific sums received by guardian during	
plaintiff's minority-Limitation	A 120 N 2
(c) Fo —Lamitation	A 110 N 13
ty who can give	A 110 N 13
(n) Where special enactment prescribes special period of	
limitation	A 110 N 13
(d) For impeaching alienation by limited female owner-Right	
of minor to bring such suit under Pinjab Customary Law where major reversioners omit to suo within period of	
limitation suo within period of	A 125 N 7
(e) For legacy-Limitation-Time, whether extended by virtue	
of S. 6, Limitation Act	A 128 N 13
(f) For setting aside sale of equity of redemption by guardian and	
for possession of property redoemed by purchaser of equity	
of redemption—Limitation	A 134 N 11
(g) For share in joint family property—Limitation:—Starting	A 127 N 16
(h) For share of property of intestate—Limitation—Time, whe-	11 121 11 10
ther extended by virtue of S. G. Limitation Act	A 123 N 13
(1) Hear dying without claiming his share-Suit by minor heir	
of such heir—Limitation—Time, whether extended by virtue	
of S 6, Limitation Act	A 123 N 13
 (i) Minor suing as major by bona fide mistake (i) Application for amendment of mistake—Whether can 	
be allowed when made beyond time	S 22 N B
(u) Minor attaining majority—Whether can be allowed to	D 22 11 0
continue suit	S 22 N 8
	S 6 N 24
Minority	
Effect of Minority, if negatives knowledge	S 6 N 26
Extension of time on ground of	
(a) Cause of action different—Hindu widow succeeded by minor	
reversioner—Suit for possession—Extension, if available	S 6 N 14
(b) Cause of action same—Father dying without suing — Minor son, if entitled to extension of time	S 6 N 14
(c) Time for application for leave to appeal as panper, whether	D 0 14 14
extended on ground of minority	A 170 N 5
Period from which disability counts—Child in womb	S 6 N 25

Money-Charged upon immovable property-Suit for payment of-(Contd.)

(vi) Art. 132 and special or local law for such suits, appli-	_(00)******
cability of	4 100 27 0
/ \D TT\ 10 12 10 10 10 10 10 10 10 10 10 10 10 10 10	A 132 N 2
(vii) By principal to enforce charge on immovable property	A 132 N 8
created to secure moneys which might be found due	1 100 37 0
*** ***	A 132 N 3 A 132 N 4
—Effect of	A 132 N 26
. 100	A 132 N 20 A 132 N 8
y sued for becomes	A 152 N 6
	A 132 N 23
(xiii) Limitation	A 152 N 25
(a) Mortgagee, whether gets fresh cause of action	
where conveyance of portion of mortgaged pro-	
perty in discharge of claim under mortgage turns	
and do I a fin a small a	A 132 N 25
(b) Starting point—Where mortgage is for term	H 134 R 20
and a site of the state of an	A 132 N 24
(c) Time, whether suspended by mortgaged property	A 102 N 41
	A 132 N 25
(xiv) Suit comprising both claim to enforce charge upon	77 102 11 20
immovable property and claim to enforce personal	
covenant in mortgaged document—Limitation	A 132 N 2
(xv) Suit for payment of interest charged upon mortgaged	
	A 132 N 12
	W 107 11 12
(xvi) Suit to onforce payment of money charged by docu- ment on immovable property—Limitation	A 132 N 8
(xvii) Suit to enforce vendor's lien—Limitation	A 132 N 7
(xviii) Suit to recover kattubad:—Limitation	A 132 N 8
(xix) Suit to recover money due nn mortgage by deposit of	
titlo deeds—Limitation	A 132 N 22
(xx) Subsequent suit against person interested not made	
party to prior mortgage suit—Limitation	A 132 N 16
(xxi) What is	
(a) Suit by Hindn widow for recovery of money	
(a) Suit by Hindn widow for recovery of money which she expended in discharge of her husband's	
(a) Suit by Hindn widow for recovery of money	A 132 N 8
(a) Suit by Hindu widow for recovery of money which she expended in discharge of her husband's debt	
(a) Suit by Hindn widow for recovery of monoy which she expended in discharge of ber husband's debt	A 132 N 8
(a) Suit by Hindu widow for recovery of money which she expended in discharge of her husband's debt (b) Suit by mortgageo against third person who has received money due to mortgageo from mortgageo	
(a) Suit by Hindu widow for recovery of money which she expended in discharge of ber husband's debt (b) Suit by mortgageo against third person who bas received money due to mortgageo from mortgagor (c) Suit by pine cosharer in vatan ugainst another	A 132 N 8
(a) Suit by Hindu widow for recovery of money which she expended in discharge of hor husband's debt (b) Suit by mortgageo against third person who bas received money due to mortgageo from mortgageo (c) Suit by nne co-sharer in vatan against another	A 132 N 8 A 132 N 11
(a) Suit by Hindu widow for recovery of money which she expended in discharge of her husband's debt	A 132 N 8
(a) Suit by Hindu widow for recovery of money which she expended in discharge of bor husband's debt	A 132 N 8 A 132 N 11
(a) Suit by Hindu widow for recovery of money which she expended in discharge of bor husband's debt (b) Suit by mostgageo against third person who has received money due to mortgageo from mortgageor (c) Suit by nine co-sharer in vatan against another co-sharer who has received improperly plaintiff's share of haqqs (d) Suit by vendeo of property for recovery of moneys paid by him as per directions in sale deed on	A 132 N 8 A 132 N 11 A 132 N 20
(a) Suit by Hindu widow for recovery of money which she expended in discharge of ber husband's debt (b) Suit by montgageo against third person who bas received money due to mortgage from mortgager (c) Suit by nne cosharer in vatan ugainst another co-sharer who has received improperly plaintiff's share of haggs (d) Suit by vendeo of property for recovery of moneys paid by him as per directions in sale deed on such sale deed bung sot asido	A 132 N 8 A 132 N 11
(a) Suit by Hindu widow for recovery of money which she expended in discharge of bor husband's debt (b) Suit by mostgageo against third person who has received money due to mortgageo from mortgagor (c) Suit by nine co-sharer in vatau against another co-sharer who has received improperly plaintiff's share of haqqs (d) Suit by endeo of property for recovery of moneys paid by him as per directions in sale deed on such sale deed being sot asido (e) Suit for forecosure—Suit, whether one to enforce	A 132 N 8 A 132 N 11 A 132 N 20
(a) Suit by Hindu widow for recovery of money which she expended in discharge of bor husband's debt. (b) Suit by mortgageo against third person who bas received money due to mortgageo from mortgagor	A 132 N 8 A 132 N 11 A 132 N 20 A 132 N 6
(a) Suit by Hindu widow for recovery of money which she expended in discharge of bor husband's debt	A 132 N 8 A 132 N 11 A 132 N 20
(a) Suit by Hindu widow for recovery of money which she expended in discharge of bor husband's debt. (b) Suit by mortgageo against third person who bas received money due to mortgageo from mortgagor	A 132 N 8 A 132 N 11 A 132 N 20 A 132 N 6

Money-Charged upon immovable property-Suit for payment of- (Contd.)	What is—
(g) Suit for redemption-Whather one to enforce	
payment of money charged upon immovable	
property (h) Suit for sale—Whether one to enforce payment	A 182 N 3
charged upon immovable property	A 132 N 3
(i) Suit for share of mortgage money received by	W 107 H 9
co-owner of property who has mortgaged the	
same and received the mortgage money	A 132 N 8
——Collected by defendant as subscription	A 62 N 7
Deposited	
(a) Deposit, whether must be under agreement that it shall be	1 CO NT F
payable on demand for applicability of Art. 60	A 60 N 7
(b) On terms that depositee should return equivalent sum to depositor—Limitation	A 62 N 17
· · · · · · · · · · · · · · · · · · ·	V 02 W 11
(c) Suit for (1) Against person who has placed himself in position of	
banker with regard to particular person—Limitation :	A 60 N 6
(ii) Limitation—Starting point	A 60 N 10
(iii) Limitation, where money is deposited under agreement	
that it shall be payable on demand	A 60
(iv) Money deposited as carnest money for purchase of pro- perty—Limitation	A 60 N 7
(v) Money deposited as security for due performance of	
certain act—Limitation	A 60 N 7
(vi) Money deposited in Court in usum jus habentis and	
withdrawn by person not entitled to it-Suit for such	T
money—Limitation A 62 (vii) Money deposited on torms that depositee should return	N 31 F N 1
equivalent sum to depositor—Limitation	A 62 N 17
(yiii) Money deposited with Nattukottai Chetties on	
thavanas system—Limitation	A 60 N 7
(ix) Money kept in deposit with a particular person - Limi.	
tation	A 62 N 31
(x) Money payable at specified time but contract between	
parties showing that after period so fixed, deposit is to be regarded as payable on demand—Limitation	A 60 N 7
(xi) Scope of Art. 60	A 60 N 6
(xii) When demand is made	11 00 11 0
(a) "Demand" hy Nattukottai Chetty husband in	
whose name wife's Stridhan is deposited in a	
firm, whether demand hinding on wife so as to start time running	A 60 N 9
(b) "Demand" by whom should be made, to start	A 00 H 3
time running	A 60 N 9
(c) 'Demand' what is, to start time running under	
Art. 60 (xiii) With banker—Suit for—Limitation	A 60 N 8
——Due under statutory liability—Suit for—Limitation	A 60 N 3 A 120 N 43
—Government securities, whether money, within Art. 57	A 57 N 6
-Grain, whether money	A 57 N 6
,	Lim, 184
	TIGH, 104

2920	GENERAL INDEX	
Money-	-Charged upon immovable property-Suit for payment of-	_(Contd.)
	(vi) Art. 132 and special or local law for such suits, appli-	
	(vii) By Hindu widow for arrears of maintenance	A 132 N 2 A 132 N 8
	(vii) By Findu widow for arrears of maintenance (vii) By principal to enforce charge on immovable property created to secure moneys which might be found due	A 132 N 6
	from agent on taking accounts	A 132 N 3
	C \ (m = 10 3.0 ± 0	A 132 N 4
	•••	A 132 N 26
	• • •	A 132 N 8
	becomes .	
	due"	A 132 N 23
	(xiii) Limitation	
	(a) Mortgagee, whether gets fresh cause of action where conveyance of portion of mortgaged pro-	
	perty in discharge of claim under mortgage turns	
	out to he inoperative	A 132 N 25
	(b) Starting point-Where mortgage is for term	
	certain with default clause (c) Time, whether susponded by mortgaged property	A 132 N 24
	becoming submerged under water	A 132 N 25
	(xiv) Suit comprising both claim to enforce charge upon	21 200 21
	immovable property and claim to enforce personal	
	covenant in mortgaged document-Limitation	A 132 N 2
	(xv) Suit for payment of interest charged upon mortgaged property—Limitation	A 132 N 12
	(xvi) Suit to enforce payment of money charged by docu-	
	ment on immovable property—Limitation	A 132 N 8
	(xvii) Suit to enforce vendor's lien—Limitation	A 132 N 7
	(xviii) Suit to recover kattubadi—Limitation	A 132 N 8
	(xix) Suit to recover money due on mortgage by deposit of	
	title deeds—Limitation	A 132 N 22
	(xx) Subsequent suit against person interested not made party to prior mortgage suit—Limitation	A 132 N 16
	(xxi) What is	
	(a) Suit by Hindu widow for recovery of money which she expended in discharge of her husband's	
	debt	A 132 N 8
	(b) Suit by mortgageo against third person who has	
	received manage due to mortgages from mort-	
	gagor	A 132 N 11
	(c) Suit by one co-sharer in vatan against another	
	an absentable has received improperly plaintiff's	
	sbare of haggs	A 132 N 20
	(d) Suit by vendoe of property for recovery of moneys	
	paid by him as per directions in sale deed on	A 132 N 8
	such salo deed being set aside	V 102 71 2
	(c) Suit for foreclosure—Snit, whether one to enforce	
	payment of money charged upon immovable	A 132 N 3
	(f) Suit for money paid by trustee out of his own	
	pocket for purposes of trust	A 132 N 8

	2020
Money-Charged upon immovable property-Suit for payment of-	What is—
(g) Suit for redemption—Whether one to enforce payment of money cherged upon immovable	
property (h) Suit for sale—Whether one to enforce payment	A 132 N 3
cherged upon immovehle property (1) Suit for share of mortgage money received by	A 132 N 3
co-owner of property who hes mortgaged the same end received the mortgage money	A 132 N 8
——Collected by defendant as subscription	A 62 N 7
(a) Deposit, whether must be under egreement that it shall be payable on demand for eppheahility of Art. 60	A 60 N 7
(b) On terms that deposites should roturn equivalent sum to depositor—Limitation	A 63 N 17
(c) Snit for	
(i) Against person who has placed bimself in position of banker with regard to particular person—Limitation : (ii) Limitation—Starting point	A 60 N 6 A 60 N 10
(in) Limitation, where money is deposited under agreement that it shall be payable on demand	A 60
(iv) Money deposited as earnest money for purchase of pro- perty—Limitation	A 60 N 7
(v) Money deposited as security for due performance of certain act—Limitation	A 60 N 7
(vi) Money deposited in Court in usum jus habents and withdrawn by person not entitled to it—Suit for such	20021
	N 31 F N 1
equivalent sum to depositor—Limitatico	A 62 N 17
(viii) Money deposited with Nattukottai Chetties on thavanai system—Limitation	A 60 N 7
(ix) Money kept io deposit with a particular person — Limitation	A 62 N 31
(x) Money payable at specified time but contract between parties abowing that after period so fixed, deposit is	A 02 N 31
to he regarded as payable oo demand-Limitation	A 60 N 7
(xi) Scope of Art. 60 (xn) When demand is made	A 60 N 6
(a) "Demand" by Nattukottai Chetty husband in	
whose name wife's Stridban is deposited in a firm, whether demend binding on wife so as to	
start time rnnning (b) "Demand" by whom should he made, to start	A 60 N 9
time running	A 60 N 9
(c) 'Demand' whet is, to start time running under Art. 60	A 60 N 8
(xiii) With hanker—Suit for—Limitation	A 60 N 3
Due under statutory liability_Surt for_Limitation	A 120 N 43
Government securities, whether money, within Art. 57	A 57 N 6
—Grain, whether money	A 57 N 6

A 69 N 8

Мо

oney—(Contd.)	
-Had and received	
(a) Money received by defendant for plaintiff's use at the time	
of receipt—What is—Illustrative cases	A 62 N 7
(h) Privity of contract—Whether necessary to constitute receipt	
of money by defendant—Receipt for plaintiff's use.—Indian	
law	A 62 N 2
(c) Suit for	
(i) Against henamidar, receiving money belonging to real	
	A 62 N 24
(ii) Against trustee — Snit for account of trust property	
and recovery of dnes-Limitation	A 62 N 4
(iii) Based on allegation that defendant ought to have receiv-	
ed certain sum of money on plaintiff's hehalf.—Limi-	
tation	A 62 N 6
(iv) By auction purchaser for refund of purchase money on	
sale of patni talnk for arrears of rent being set aside	
	A 62 N 20
 (v) By consignor for surplus sale proceeds of goods sold by 	
Railway Company under Railways Act, S. 56-Limi-	A 62 N 31
	A 62 N DI
(vi) By Karnavan of Malabar Tarwad for money belonging	
to Tarwad and received by junior member - Limi-	A 62 N 31
	A 02 IV 02
(vii) By one cosharer against another cosharer who has	A 62 N 9
received former's share of money due - Limitation :	A 02 10
(viii) By principal against agent for halance due out of moneys received by agent after deducting all legiti-	
mate expenses and allowances—Limitation	A 62 N 10
(ix) By principal against agent for money received by agent	
for principal under circumstances which make it	
sample duty to any annu to minimal immediately	
money is received—Limitation	A 62 N 10
(x) By principal against legal representative of deceased	
agent for recover received by Jaconsed agent for 1700 Of	
principal—Limitation	62 N 11
(xi) By real owner against benamidar for money received	
	62 N 24
tation A	1 62 N 2#
(xii) By real owner against decree-holder for money wrongly	
attached in execution of decree and paid over to	62 N 27
	021121
(xiii) By ward against guardian for specific sums received	62 N 25
by latter—Limitation A (xiv) Defendant drawing monoy invested by him in bank	
and which belonged to deceased lady — Suit for reco-	
	62 N 31
(xv) Essential conditions for applicability of Art. 62	63 N 3
() The second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second o	
	110 N 3
(xvii) For haqq.i.chaharam—Limitation A	62 N 30

(xvii) For haqq.i-chaharam—Limitation ... (xviii) For money received by defendant for use of plaintiff's predecessor-in-interest—Limitation ...

Money-Had and received-Suit for-(Contd.)	
(xix) For recovery of money received by defendant as offer-	
ings for shrine	A 62 N 29
(xx) F	
realized—Limitation	A 120 N 2
(xxi) For rent received by defendant in kind	A 62 N 6
(xxi) For specific sums received by guardian during plain-	
tiff's mioority—Limitation	A 120 N 2
(xxiii) For sums due to plaintiff out of collections from vil-	
lage	A 62 N 31
(xxiv) Illustrative cases of, governed by Art. 62	A 62 N 31
(xxv) Judgment-dehtor paying certain sums under decree to	
decree-bolder — Application by judgment-dehtor for	
certificate of satisfaction rejected—Suit by judgment-	
debtor for recovery of money paid to decree holder— Limitation applicable, whether same as applicable to	
suit for money had and received	A 62 N 31
(xxvi) Land purchased by A — Salo of land for arrears of	02 1 01
revenue - Surplus sale proceeds paid to B, original	
owner-Suit by A against B for surplus sale proceeds	
-Limitation applicable, whether same as applicable	
to suit for money had and received	A 62 N 21
	62; A 62 N 2
 (a) Art. 62 applies whether liability of defendant arises under statute or under general principles 	
of law	A 62 N 2
(b) For suit not falling under Art. 62	A 120 N 26
(c) Illustrative cases governed by residuary Art 120.	A 120 N 14
(d) Starting point	A 62 N 32
(xxviii) Money, whether must have been received for plaintiff's	
use at the time of receipt for applicability of Art. 62	A 62 N 7
(xxix) Nature of, under English Law	A 62 N 2
(xxx) Partition of joint Hindu family — Karta assigning to member a mortgage bood already paid off — Suit by	
member against ex-karta for recovery of money —	
Limitatioo	A 62 N 7
(xxxi) Paymeot of premium by tenant to landlord - Such	
premium prohibited by Bombay Rent Act-Claim for	
refund of premium paid—Limitatioo	A 120 N 2
(xxxii) Plaintiff entitled to receive under terms of a will,	
certain amount as manutenance from income of certaio properties in hands of defendant—Limitation	A 62 N 16
(xxxiii) Plaintiff coulded to see either for money had and	
received or for some other relief to which shorter	
period of limitation is applicable—Plaintiff, whether	
can he compelled to suo for relief to which shorter	
period of limitation is applicable	A 62 N 2
(xxxiv) Succession certificate obtained by brother of deceased Money realized Suit by widow of deceased for	
recovery of money—Limitation	A 62 N 9
***************************************	02 11 5

2932		GBNERAL	INDEX			
Money—Had an	nd received—S	uit for—(C	ontd.)			
	Sum of money			cairos mona	w in	
(2227)	circumstances					
	—Suit by B					
	whether barre					
			recozery by	B against.	a is	A 62 N
, ,	harred by lim				•••	
	Time, whether				•••	A 62 N 3
(XXXVII)	To recover fru					
	tative of plan				hy	
	latter for pay				•••	A 62 N
(xxxviii)	Whether one i	n nature of s	uit for dams	ages or comp	en-	
	sation	•••	***	***	•••	A 62 N
(d) Test t	o determino w	hether mon	ey is receive	ed for plaint	iff's	
tise	•••		•••	•••	•••	A 62 N
(e) What	is	•••	•••		•••	A 62 N
(1)	Illustrative cas				•••	A 62 N
	Money had and		defendant's	predecessor	·in·	
, ,	interest, whel					
	dant	inor money				A 62 N 6
(iff)	Money paid	he plaintiff	tn defend	ent under 1	hior	
	agreement, w	hether mone	w had and re	ceived		A 62 N
(iv)	Money receive				nev	
(**)	had and recei			H DC C DC C	203	A 62 N 6
(-)	Money which			ntiff in nose	and	
(*)	to which defe			пып сп раз		A 62 N 5
				. 	•••	24 02 -1 .
	property conv	erted into -	-Whether	immovable j	pro.	141 N 11
_porty		•••	. •••	•••		A 115 N 8
	thavanai tran	sactinns—Sn	it for—Limi	itation	•••	W IID I
Lent-Suit						A 57
(a) Limit		•••	•••	•••	***	A 57 N 1
	Arts. 57 and 5			•••	•••	ADIN
	General and sp			•••		A 57 N
(iii)	Starting point	- Where I	lender has g	iven cheque	for	A 58 N I
	money	•••	•••	•••	•••	A 55 N 1
(17)	Where lender	draws his n	wn cheque	and gives if	: to	
	borrower		•••	•••	•••	A 58 N 1
(v)	Where lender	transfers t	o borrower	cheque dra	wn	
	by another	person and	endorsed in	bis favour	рå	1
	pavee	• • • • • • • • • • • • • • • • • • • •		•••	•••	A 58 N 1
(vi)	Where money	is lent under	agreement	that it shall	l be	
	payable on	demand -	"On deman			
	of			A 59; A	59 N 6	A 57 N 7
(h) On n	noney dealings	•••	•••	•••	•••	Abini
(c) Stipt	lation to pay in	terest, whetb	er makes difi	ference in ap	pli.	A 59 N 7
cahi	lity of Art. 59		***	•••	•••	A by N
(d) Whe	re loan is on a	reement tha	t it is repay	able on fut	ure	A 57 N 5
date	e-Limitation	•••	•••	•••	•••	A 51 N 2
-Meaning of		•••			:	A DI N 2
Obtained l	y defendant fr	om third par	ty who had	obtained it	bу	A 62 N 15
fraud pra	ctised upon pla	intiff	•••	•••	•••	V 03 II 10
-Paid as cor	nsideration whe	ro transfer of	property is	void - Limi	ta-	A 62 N 5
tion					• • •	V 03 H o

Lion

—Paid by plaintiff for defendant

(aa) General and special provisions of limitation ...

A 81 N 1

(a) Money paid to third person for defendant — When recoverable from defendant under substantive law ...

(b) Question under what circumstances money paid for defendant can be recovered by plaintiff, is one of substantive

law ... (c) Question whether payment to third person was for defen-

Money-Paid by plaintiff for defendant-(Contd.)

dant is one of fact

A 61 N 5

A 61 N 2

A 61 N 5

(d) Snit fo	r		
(i)	A depositing money with R to be paid to of depositee to pay—Depositor paying t depositor against depositee—Limitation	o C - Suit by	A 61 N 8
(n)	A taking over B's liability and subsequent		14 01 11 0
	Snit by A against B for reimbursement-	-Limitation.	A 61 N 9
(iii)	By person interested in property, paying liable to be paid by defendant—Limitat	ng off charge	A 61 N 7
(iv)	By receiver to recover money spent for e	state	A 61 N 14
(▽)	By succeeding trustee of temple against tee for recovery of sum taken by latter	for litigation	
()	purposes during trusteeship—Limitation Paid for defendant and creating mon		A 61 N 3
, ,	property		A 61 N 17
(711)	For reimbursement for fine paid by plain of land by defendant		A 61 N 13
(riii)	7 1 11	·· ··	A 61
(11.5)	(a) Applicability of general Art. 61 who		
	Article applies to the case		A 61 N 2
	(b) General and special provisions of		A 61 N 2
			A 61 N 18
	(1) Where plaintiff has made sever		
	to meet a particular liability	of defendant	A 61 N 18
	Onus of proof		A 61 N 19
(x)	Where defendant bas contracted to pay		1 01 37 5
	plaintiff		A 61 N 5
,	Where money has been deposited into (pose of being paid to defendant .		A 61 N 4
(iix)	Where money is paid for defendant by against plaintiff's will	tbird person	A 61 N 3
(x111)	Where plaintiff, being interested in si	ich payment,	
	has paid it for defendant		A 61 N 5
(xiv)	Where plaintiff has been forced to make	e involuntary	
	payment	• •••	A 61 N 3
(xv)	Where plaintiff has made the payment not intending to do so gratuitously and enjoyed benefit thereof	defendant has	10177
, ,	• • •		A 61 N 5
(XVI)	Where plaintiff is in justice and equif	ty entitled to	A 61 N 5
(swir)	Where plaintiff pays money to third pe		A 01 N 0
(XVII)			A 61 N 5

Money-Paid by plaintiff for defendant-(Contd.) (e) What is

 A, in possession of property adjudged to him by competent Court pays off charge on property—B subset 	•
quently decided nn appeal to be nwner of property— Payment by A, whather payment for B within	
Art. 61	. A 61 N
(ii) Allegation by A that be is lawful heir to deceased	
person-Payment by A of deceased person's dehts-	
B subsequently found to be true heirPayment by	7
A, whether payment for B within Art. 61	A 61 N
(iii) Mere fact that defendant or his property is liable to	1
pay to third person on date on which plaintiff pays	š
to such third person, whether necessarily shows that	t
payment was for defendant	A 61 N
(iv) Money paid by agent for liabilities incurred for princi-	
pal, whether money paid for defendant within Art. 61:	A 61 N 1
(v) Money paid to third person to whom defendant is not	A 61 N
liable, whether money paid for defendant	
(vi) Money spent by receiver for purposes of estate, whether	A 61 N 1
money paid for defendant within Art. 61	
(vii) Payment by one co.partner of common liability, whe-	A 61 N
thar payment for other co-partners within Art. 51	
(viii) Payment by one of two joint owners of tenure ta save	,
estate from sale for arrears of ravenue and rent	A 61 N
whether payment for other joint owner (ix) Payment in excess of his share by one of several persons	
jointly liabla, whether paymant for other persons	t
liable	A DI N
Paid by reason of fraud of third party	A 97 N
Paid for joint purchasa-Recovery of-Suit for-Limitation	A 89 N
Paid in consideration of voidable transfer without possession-	
Timetation City	ASIN
	A 62 N 29
	A 97 N
· Contract Act · · · · · · · · · · · · · · · · · · ·	A SI A.
(b) Consideration which afterwards fails	A 97 N 4
(1) Illustrativa cases	A 97 N
(ii) Meaning of	A 97 N 4
(a) Whether means failure of total consideration (c) Essentials of applicability of Art. 97	A 97 N
(d) Existing consideration	
(i) Agreement discovered to be void, whether existing	
consideration	A 97 N 11s
(ii) Consideration which is at the time of payment void in	
law, whether existing consideration	
(ui) Executed consideration, what is	A 97 N 4
(1v) Executory consideration	A 97 N 4, 11
(a) What is	A 97 N 11
(b) Whon can be said to fail	
(v) Mortgage of property under attachment, whether exist-	A 97 N 3
ing consideration	
(vi) Mortgage void but upon which mortgageo receives interest, whether existing consideration	A 97 N 3
thierest, whether existing consideration	

GENERAL INDEX	2930
Money-Paid on existing consideration-Existing consideration-(Contd.)
(vii) Possession given under a void promise to transfer, whe-	
ther oxisting consideration	A 97 N 3
(viii) Sham sale deed, whether existing consideration	A 97 N 3
(ix) Void transfer with delivery of possession, whether	70 407 37 77
existing consideration A 97 N (x) Voidable transfer with possession given, whether exist-	18; A 91 N 1
ing consideration	A 97 N 9
(xi) Voidable transfor without possession, whether existing	12 01 11 0
consideration	A 97 N 8
(e) Limitation A 6	52 N 13; A 97
(1) Extension of—Period, whether extended to six years	
in cases falling within both Art, 97 and Art, 116	A 97 N 2
 (ii) Starting point (α) Monoy paid on void transfer with delivery of 	A 97 N 5
possession—Illustrative cases	A 97 N 7
(b) Suit on contract which fails through Court of	11 0 1 2 1
law refusing to enforce its specific perform-	
ance	A 97 N 11
(c) Suit on failure of executory consideration —	
Illustrative cases	A 97 N 11
(d) Where Appellate Court confirms decision of first Court deciding transfer void in case of voidable	
transfer without possession	A 97 N B
(e) Where first Court decides transfer void and	
second Court reverses it which io its turn is	
reversed by High Court in case of voidable trans.	
fer without possession	A 97 N 8
(f) Where in execution of decree by third person with paramount title against plaintiff, such third	
party is formally put in possession of property	
purchased by a plaintiff	A 97 N 7
(g) Whether can be postponed by reason of the fact	
that decision of 6rst Court is confirmed by	
Appellate Court where such decision is the	1 00 N 11
failure of consideration	A 97 N 11
parties—Suit for, whether suit within Art 97	A 97 N 1
(g) Money paid	
(i) Adjustment of mntual claim, whether payment of	
шопеу	A 97 N 2
(11) Debt retained in part payment of money payable by	1 05 27 0
creditor—Whether there is payment in such cases	A 97 N 2
(b) Money paid upon registered mortgage but mortgaged property eubsequently sold for payment of municipal taxes free of	
mortgage—Limitation	A 97 N 10
(i) D.11 1	A 97 N 1
lure of existing	110111
*** ***	A 97 N 11
(k) Right to recover such money, basis of	A 97 N 1
(1) Suit for, distinguished from one for damages or compensation	A 97 N 2
(m) Suit for mortgage money under S. 68, T. P. Act, if one based	
on failure of consideration	A 97 N 10

Money—(Contd.)	
Paid on void transfer with delivery of possession-Remedies of per-	
son paying money	A 97 N 7
Paid on void transfer without possession Remedies of person	
paying money	A 97 N 6
-Paid on voidable transfer with possession -Limitation-Start.	A 97 N 9
ing point—Illustrative cases	ASINS
	A 97 N 8
ring point	ASINO
Failure of witness to attend in pursuance of summons served	•
on him—Suit for recovery of monoy paid—Limitation	A 62 N 31
-Paid under agreement void ab initio-Limitation	A 62 N 12
-Paid under decree which is afterwards set aside or reversed	A 62 N 18
	14; A 96 N 4
——Paid under protest	
(a) Suit in respect of money paid in satisfaction of claim for	
arrears of revenue	
(i) Limitation	
(a) Applicability of Art. 16 and Madras Revenue	A 16 N 5
Recovery Act, S. 59 (b) Applicability of Art. 16, essentials of A	16; A 16 N 2
(c) Starting point	A 16 N 4
(ii) Under Madras Compulsory Labour Act, S. 6-Limi.	-
tation	A 16 N 5
(iii) Under Madras Revenue Recovery Act, S. 52-Limi-	A 16 N 5
tation	A 10 M U
(h) Suit in respect of money paid on account of demands recoverable as arrears of revenue—Limitation	A 16
(c) What is	A 16 N 8
-Paid upon agreement discovered to be void-Limitation-Starting	
point	A 97 N 11a
Paid upon void consideration-Limitation-Starting point	A 97 N 11a
Payable in instalmentsVerbal contract for Suit on-Limi.	A 75 N 3
tation	AIDIO
Payment of (a) Mcaning of	A 61 N 3
(h) What is—Giving of security to pay, whother payment	A 61 N 3
Purchase money	
(a) Suit for refund by auction purchaser - See Auction	
purchaser.	
(b) Suit for refund for default of vendor-See Vendor and	
vendee. ——Receipt of — What is	
(a) Receipt of paddy, whether receipt of money	A 62 N 6
(b) Recent of rent in kind, whether recent of money	A 62 N 6
	A 51 N 2 A 89 N 6
	A 29 N 5
Whether moveable property within Art. 29	A 145 N 2
Whether moveable property within Art. 145 Whather specific margaphic property.	A 48 N 3
Whether specific moveable property	
Suit by real owner—Limitation	A 69 N 27
Company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the company of the compan	

S 21 N 16

Mortgage	
Acknowledgment	
(a) By judgment-debtor io respect of mortgage on property— Whether binding on auction-purchaser	S 19 N 34
(b) By mortgagor, after he has parted with his entire interest in equity of redomption and when not personally liable— Whother can be used against transfereo of equity of redemption as acknowledgment by person through whom transferee derives liability	8 19 N 25
(c) Entry in settlement record that certain property is under a mortgage—When can be used as acknowledgment of liabi.	
lity in respect of mortgage (d) Mortgageo obtaining decree for possession and delivery thereof—Mortgageo giving recent acknowledging that he has received delivery of possession as directed by decree—Decree stating that claim of decree-holder was based on mortgage—Receipt, if contains acknowledgment of hability with respect to mortgage as to save limitation for suit	S 19 N 49
for redemption of mortgage	S 19 N 18
(e) Mortgagor grantiog mortgage with possession to stranger. Stranger allowing revenue payable oo land to fall into arrears—Property sold for arrears of revenue—Stranger purchasing property at reveoue sale—Acknowledgment by mortgagor io regard to first mortgage—Whether binding on	S 19 N 84
stranger	2 19 N 94
Mortgager algoing entry in account flow of infortgaged— Mortgager algoing entry in account flow of infortgaged— acknowledges lability oo his part	8 19 N 31
-Admission of mortgage	
(a) Admission of existence of mortgage by person on whom mort- gage right devolves subsequently—Whother can be used as acknowledgment against transferce of the right from such	
person	8 19 N 25
(b) Whether amounts to admission of mortgagee's right to possession of mortgaged property under terms of the mortgage:	S 19 N 27
Assignment of	
(a) Assignment ab initio void.—Assignee receiving money on	
bond—Suit by assignor for recovery of money so received —Limitation	A 62 N 31
(b) Assignment by mortgagee—Mortgages thereafter receiving mortgage money in fraud of assignee—Sult by assignee for money received by mortgagee—Limitation	A 62 N 31
-By conditional sale	
(a) Foreclosure of—Enactments as te (b) Suit for possession by mortgagee—Limitation (c) Suit for possession by mortgagee not entitled to possession—	A 135 N 9 A 135 N 9
Limitation	A 135 N 2
Co.mortgagees (a) Acknowledgment by joint mortgagee—Whether saves limitation for suit for redemption	8 21 N 16
entition tot auta for somewheren	O 22 11 10

(h) Death of one of two co-mortgagees—Acknowledgment by survivor—Sufficiency of, to keep alive right of redemption

Mortgage-Co-mortgagees-(Contd.)	
(c) Mortgagee right partitioned and each co-mortgagee in sepa-	
rate possession of a portion of the mortgaged property—	
Acknowledgment by one co-mortgages — Whether can be	
used in suit for redemption of the particular share in his	S 21 N 1
enjoyment	D 21 N 1
(d) Mortgagee right vested in several persons jointly—Suit hy	
one of them without impleading others—Suit must ho	S 22 N 17
dismissed	D 22 N 1
(e) Payment made to one of several joint mortgagees—Suffi.	S 21 N 6
ciency of, for purposes of S. 20	9 21 N
(f) Statement hy one mortgagee that money due on mortgage	
remained unpaid - Equity of redemption subsequently	
hecoming vested in him - Suit hy other mortgagee for	
recovery of his share of mortgage money. Statement, if	
can he used as acknowledgment of liability to save limi-	S 19 N 33
tation for suit	p IA M on
(g) Suit by one co-sharer on the mortgage-Decree passed in	
favour of all co-sharers—Suit for contribution in respect of	A 61 N 12
costs incurred in suit on mortgage—Limitation	A 01 14 12
(h) Suit for contribution against other co-mortgages by a co-	
mortgagee who pays off mortgage-Limitation-Starting	A 132 N 10
point	A 89 N 7
(i) Whether agent of another co-mortgages	27 09 24 .
(1) Whether one can give discharge on behalf of all within the	87N22
meaning of S. 7	D 1 11 =-
——Co-mortgagors (a) Acknowledgment by one co-mortgagor—Whether saves limi-	
tation as against other co-mortgagors	S 21 N 11
(h) Mortgagor transferring portion of equity of redemption to	
another Mortgagor and transferee, if joint contractors	
within the meaning of S. 21	B 21 N 8
(c) Payment by one, if saves limitation against the others	B 21 N 11
(d) Redemption by co.mortgagor Suit by other co.mortgagors	_
(d) Redemption by co-mortgagor—Suit by other co-mortgagors for their shares of property—Limitation—Starting point:	A 148 N 3
(e) Suit for contribution against co-mortgagor by a co-mortgagor	0
paying off mortgage Limitation	A 132 N 10
(f) Suit for interest against co-mortgagor for amount paid for	
redemption—Limitation	A 115 N 14
(g) Suit for share of mortgago money received by defendant	
mortgagor on the allegation that mortgaged property was	
undivided ancestral property in which plaintiff had a right	S. 20 N 4
—S. 20 does not apply	S. 20 N 4
(h) Suit for share of mortgage money received by co-owner of	
property who had mortgaged it and received the whole of	A 132 N 8
mortgago monoy—Limitation	V 107 11 0
English mortgago	
(a) Suit for forcelosuro	A 147 N 1
(i) Limitation	A 147 N I
(ii) Maintainability of suit (b) Suit for sale—Limitation	A 147 N 1
—Equitable mortgage	
(a) Enforcement of Suit for Limitation	A 147 N ²
(b) Suit by mortgagor for document deposited after redemption	
1 morePapor for goodifficing galosson arrest research	

Mortgage—Equitable mortgage—(Con	td.)			
of mortgage—Limitation—St			A	19 N 9
(c) Suit for foreclosure-Maintain				17 N 2
(d) Suit for money due-Limitation				2 N 22
(e) Suit for sale-Limitation				7 N 2
Final decree				
(a) Application for—See also unde	r Decree—Fin	al decree.		
(1) Is not one for execution			. A 182 N	12. 13
(11) Whether can be saved				,
acknowledgment under		•••		N 17
(b) Preliminary decree in favour of	mortgagee-S	ubsequent p		
ing of decree against both mo				
by third person negativing m				
decree in appeal - Mortgag				
Mortgagee, if entitled to fresh	period from an	pellate decre	e S 9	N 11
(c) Preliminary mortgage decree o				
quent suit by third party again				
for declaration that hypothec				
but to him-Dismissal of suit				
cannot be excluded in compa				
application for final decree	***	***		N 11
Foreclosure				
(a) Decree for, in mortgage suit—A	pplication for-	-Limitation	A 18	1 N 4
(b) Invalid foreclosure proceedings		•••		8 N 6
(c) Irregular proceedings under Be	engal Regulation	n 17 of 180	3 <u>—</u>	
Snit by mortgagor for redemr			A 148	N 11
(d) Mortgagee issuing notice of for	eclosure under	Bengal Regu	ıla.	
tion 17 of 1806 - No furt	her proceeding	s after year	of	
		, ,	A 148	N 11
• ••		, ,		N 11
	•	· ;	A 148	
	: '.		A 148	N 11 8 N 6
•	•		A 148	
	: ·		A 148	
	: ' ·		A 148	
			A 148	
			A 148 A 14	8 N 6
mortgagor			A 148	8 N 6
Foreclosure or sale			A 148 A 14 A 148	8 N 6
Foreclosure or sale (a) Suit by mortgages to recover:			A 148 A 14 A 148	8 N 6
Foreclosure or sale (a) Suit by mortgages to recover a deprivation of security by wr	ongful act of n	nortgagor—S	A 148 A 14 A 148	8 N 6
—Foreclosure or sale (a) Suit by mortgages to recover: deprivation of security by wr by mortgages for foreclosure	ongful act of n or sale — Wi	nortgagor—S	A 148 A 14	8 N 6
Foreclosure or sale (a) Suit by mortgages to recover a deprivation of security by writing the procedure of security and the security of the security of security and the security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of security of	ongful act of n or sale — Wi f S. 14	nortgagor—S hether on sa	A 148 A 14 A 148 lof buit me S 14	8 N 6 N 11 N 18
—Foreclosure or sale (a) Suit by mortgages to recover; deprivation of security by wr by mortgages for foreclosure cause of action for purposes (b) Suit for Limitation—Applica	ongful act of n or sale — Wi f S. 14	nortgagor—S hether on sa	A 148 A 14 A 148 i of uit me S 14 A 13	8 N 6 N 11 N 18 2 N 2
Foreclosure or sale (a) Suit by mortgagee to recover deprivation of security by wr by mortgagee for foreclosure cause of action for purposes o (b) Suit for —Limitation—Applea —Foreclosure, suit for—Limitation	ongful act of n or sale — Wi f S. 14 bility of Arts.	nortgagor—S hether on sa 147 and 132	A 148 A 14 A 148 ioit me S 14 A 13	8 N 6 N 11 N 18 2 N 2 A 147
—Foreclosure or sale (a) Suit by mortgages to recover deprivation of security by we by mortgages for foreclosure cause of action for purposes o (b) Suit for—Limitation—Applica —Foreclosure, suit for—Limitation (a) Applicability of Arts. 147 and	ongful act of n or sale — Wi f S. 14 bility of Arts.	nortgagor—S hether on sa 147 and 132	A 148 A 14 A 148 follouit me S 14 A 13 A 14	N 11 N 18 2 N 2 1 147 7 N 1
Forcelosure or sale (a) Suit by mortgagee to recover deprivation of security by wr by mortgagee for foreclosure cause of action for purposes o (b) Suit forLimitationApplication Forcelosure, suit forLimitation (a) Applicability of Arts, 147 and (b) Startiog point	ongful act of n or sale — Wi f S. 14 bility of Arts.	nortgagor—S hether on sa 147 and 132	A 148 A 14 A 148 ioit me S 14 A 13	N 11 N 18 2 N 2 1 147 7 N 1
—Foreclosure or sale (a) Suit by mortgages to recover deprivation of security by we by mortgages for foreclosure cause of action for purposes o (b) Suit for—Limitation—Applica —Foreclosure, suit for—Limitation (a) Applicability of Arts. 147 and (b) Starting point —Interest	ongful act of n or sale — Wi f S. 14 bility of Arts. 132 distinguish	nortgagor—S hether on sa 147 and 132 A 133	A 148 A 149 A 148 lof unit me S 14 A 13 A 13 A 13 A 14 2 N 3; A 14	N 11 N 18 2 N 2 1 147 7 N 1
Forcelosure or sale (a) Suit by mortgagee to recover deprivation of security by wr by mortgagee for foreclosure cause of action for purposes o (b) Suit for —Limitation—Applica Forcelosure, suit for—Limitation (a) Applicability of Arts. 147 and (b) Startiog point	ongful act of n or sale — Wi f S. 14 bility of Arts. 132 distinguish 	nortgagor—S hether on sa 147 and 132 A 133 ovenant to r	A 148 A 14 A 148 of of with mo S 14 A 13 A 13 A 14 2 N 3; A 14	N 11 N 18 2 N 2 1 147 7 N 1
—Foreclosure or sale (a) Suit by mortgages to recover deprivation of security by wr by mortgages for foreclosure cause of action for purposes o (b) Suit for—Limitation—Applica —Foreclosure, suit for—Limitation (a) Applicability of Arts. 147 and (b) Starting point —Interest (a) Mortgage document containity principal and interest secured	ongful act of n or sale — Wi f S. 14 bility of Arts 132 distinguish ag personal co	nortgagor—S hether on sa 147 and 132 hed A 133 ovenant to p Suit on p	A 148 A 14 A 148 i of unit me S 14 A 13 A 13 A 14 2 N 3; A 14 aay	N 11 N 18 2 N 2 1 147 7 N 1
Forcelosure or sale (a) Suit by mortgagee to recover deprivation of security by wr by mortgagee for foreclosure cause of action for purposes o (b) Suit forLimitationApplica Forcelosure, suit forLimitation (a) Applicability of Arts, 147 and (b) Startiog poiet Interest (a) Mortgage document containing principal and interest secured sonal covenant to pay principal suit of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the secur	ongful act of n or sale — Wi f S. 14 bility of Arts 132 distinguish g personal co i by mortgage ncipal time-ba	nortgagor—S hether on sa 147 and 132 ed A 133 evenant to r — Suit on r rred — Snit	A 148 A 14 A 148 doluit unt me S 14 A 142 N 3; A 14 2 N 3; A 14 pay ort.	N 11 N 18 2 N 2 1 147 7 N 1
Forcelosure or sale (a) Suit by mortgages to recover deprivation of security by we by mortgages for foreclosure cause of action for purposes o (b) Suit forLimitation-ApplicaForcelosure, suit forLimitation (a) Applicability of Arts. 147 and (b) Starting poict	ongful act of m or sale — Wi f S. 14 bility of Arts. 132 distinguish g personal co thy mortgage ocipal time-ba of interest fal	nortgagor—S hether on sa	A 148 A 149 A 148 i of light mmo S 14 A 13 A 13 A 14' 2 Va 3 Ya A 14' 2 vary error to him	N 11 N 18 2 N 2 1 147 7 N 1
Forcelosure or sale (a) Suit by mortgagee to recover deprivation of security by wr by mortgagee for foreclosure cause of action for purposes o (b) Suit forLimitationApplica Forcelosure, suit forLimitation (a) Applicability of Arts, 147 and (b) Startiog poiet Interest (a) Mortgage document containing principal and interest secured sonal covenant to pay principal suit of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the security of the secur	ongful act of n or sale — Wife S. 14 bility of Arts. — 132 distinguish ag personal co thy mortgage neipal time-ba within twelve	nortgagor—Shether on sa 147 and 132 148 and 132 A 133 evenant to r — Suit on r rred — Snit big due with by years of de	A 148 A 149 A 148 i of light mmo S 14 A 13 A 13 A 14' 2 Va 3 Ya A 14' 2 vary error to him	N 11 N 18 2 N 2 1 147 7 N 1

4930	GERERAL	INDEA			
Mortgage	-Co-mortgagees-(Contd.)				
	Mortgagee right partitinned and	each co.mo	rtanaan in s	ana.	
(0)	rate possession of a portion of				
	Acknowledgment by one cn-mo				
	used in suit for redemption of	the particu	lar share in	his	
	enjoyment	obo partica		•••	8 21 N 16
(a)	Mortgagee right vested in sever	al persons i	ointly—Suit	bv	
(4)	one of them without implead				
	dismissed				8 22 N 17
(a)	Payment made to onn nf sever	al inint mo	rtrarees-S	uffi-	
(0)	ciency of, for purposes of S. 20	•••		•••	S 21 N 6
(f)	Statement by one mortgagee the	at mnney d	ue on morte	tage	
	remained unpaid - Equity of	redemptio	n subseque	ntly	
	remained unpaid - Equity of hecoming vested in him - Sui	t by nther	mortgagee	for	
	recovery of his share of morta	age money	—Statemen	, it	
	can be used as acknowledgmon	t of liabilit	y to says l	imi-	
	tation for suit		•••	•••	S 19 N 33
(g)	Suit by one co-sharer on the m	nortgage—D	ecreo passed	lin	
	favour of all co-sharers-Suit fo			t of	
	costs incurred in suit on martgag	ge— L imitat	ion	•••	A 61 N 12
(b)	Suit for contribution against oth				
	mortgagee who pays off mortg	gage—Limit	ation—Star		4 400 NT 10
	point		***		A 132 N 10 A 89 N 7
	Whether agont of another co-mor			41.	AON
(D)	Whether one can give discharge		t all within	tpe	S 7 N 22
C	meaning of S 7 ortgagors	•••	•••	•••	D K 2-
	Acknowledgment by one co-morts	arger Whe	than sames li	mi.	
(4)	tation as against other co-mortge	Pagor — M De	entities and the second	1111-	S 21 N 11
(P)	Mortgagor transferring portion of		rodemption	tn	
(2)	another - Mortgagor and tran	steren. if ic	int contrac	tors	_
	within the meaning of S. 21		***	•••	S 21 N 8
(c)	Paymont by one, if saves limitati	on against t	he others	•••	S 21 N 11
(d)	Rodemption by co-mortgagor—S for their shares of property—Li	uit by otho	r co.mortgag	ors	
	for their shares of property-Li	imitation	Starting poin	ıt:	A 148 N 3
(e)	Suit for contribution against co-n	nortgagor by	a co-mortge	COT	A 132 N 10
	paying off mortgage—Limitation	n			A 132 N 10
(£,	Suit for interest against co-mort	gagor for a	mount paid	tor	A 115 N 14
	redemption—Limitation	•••			1101
(g)	Suit for share of mortgage mor	ney received	hy defend	3115	
	mortgagor on the allegation the	t mortgage	i property	vas -L+	
	undivided ancestral property in	which plair	Itin nad Bil	SILL	S. 20 N 4
(6)	—S. 20 does not apply Suit for share of mortgage mone	··· manaiwad i	hu aa awnar	of	
(ii)	property who had mortgaged it	and received	of the whole	of	_
	mortgage money—Limitation	BIR TOCOTTO	A 2110 William	•••	A 132 N 8
Engl	ish mortgage	•••	•••		
(-)	ish mortgage				1
	•	•••	•••	•••	A 147 N 1 A 147 N 1
		•••	•••	•••	A 147 N 1
, (h	Suit for sale—Limitation	•••	•••		
Equi	table mortgage				A 147 N 2
(B,	Enforcement of Suit for Limit	ation	tow rodemnt		
(D)	Suit hy mortgagor for document	debosited gr	Tent tenterube		

Mortgage—E	quitable mori	once _Contd.					
of			}				
	mortgage-Li	mitation—Start	ing point	•••		A 49 N 9	
(c) Su	t for foreclosur	e-Maintainabi	hty	***		A 147 N 2	
(d) Su	t for money du	e—Limitation		•••	•••	A 132 N 22	
(e) Su	t for sale-Lir	nitation	•••	• • •		A 147 N 2	
-Final dec	ree	_					
(a) Ap	plication for—!	See ofso under I	Occres—Fin	al decree.			
	(1) Is not one f	or execution of	preliminary	deeree	A 1	182 N 12, 13	
		an be saved f		limitatio	ոս իչ		
415	acknowled	gment under S.	19		•••	S 19 N 17	
		o in favour of m					
		negativing more					
		l — Mortgageo					
		itled to fresh pe				8 9 N 11	
		gage decree obt				13 3 W 11	
		ird party again					
		hat hypotheca					
		missal of suit -					
		led in computin	g limitation	for mort	agoo's		
	pplication for f	inal decree	•••	***	***	8 15 N 11	
Foreclos							
		tgage suit—Ap		-Limitat	ion	A 181 N 4	
(0) #	valid foreclosur	e proceedings-	Lucci	17 of 1	900	A 148 N 6	
		or for redempti			.000-	4 710 17	
		notice of forec			legula.	A 148 N 11	
		6 - No furthe					
-	P.J		• • • • • • • • • • • • • • • • • • • •			A 148 N 11	
(e) J.		•				10 11 11	
		_					
(O T		•				A 148 N 6	
(f) I	•	•				A 148 N 6	
• • • • • • • • • • • • • • • • • • • •		•			. ·	A 148 N 6	
• • • • • • • • • • • • • • • • • • • •		•			. · •	A 148 N 6	
• • • • • • • • • • • • • • • • • • • •	·	•		• ,	. · •	A 148 N 6	
				. ,	.· •		
,	mortgagor					A 148 N 6	
—-Foreclo	mortgagor sure or sale	e to recover m			 la hauc		
——Foreclo	mortgagor sure or sale uit by mortgage	ee to recover m	ortgage mon	 ney on gro mortesgo	ound of		
Foreclo	mortgagor sure or sale uit by mortgage deprivation of s by mortgagee i	ecnrity by wron for foreclosure	gful act of reals — V	mortgago	-Suit		
——Foreclo (a) S	mortgagor sure or sale uit by mortgage deprivation of e by mortgagee i cause of action	ecnrity by wron for foreclosure to for purposes of	ogful act of or sals — V S. 14	mortgagor bether o	-Suit		Į.
— Foreclo (a) S	mortgagor sure or sale uit by mortgage deprivation of s by mortgage i cause of action uit for—Limite	ecurity by wron for foreclosure a for purposes of ution—Applicab	ogful act of or sals — V S. 14	mortgagor bether o	-Suit	A 148 N 1	
——Foreclo (a) S (b) S ——Foreclo	mortgagor sure or sale uit by mortgage deprivation of e by mortgagee i cause of action uit for—Limits suro, suit for—	ecnrity by wron for foreclosure of for purposes of tion—Applicable Limitation	ogful act of ir sals — V S. 14 lity of Arts	mortgagor Vbether o	-Suit	A 148 N 13 B 14 N 11 A 192 N	3 2 7
——Foreclo (a) S (b) S ——Foreclo (a) A	mortgagor sure or sale uit by mortgage deprivation of e by mortgagee i cause of action uit for—Limite sure, suit for— upplicability of	ecnrity by wron for foreclosure a for purposes of thion—Applicable Limitation Arts. 147 and 1	ogful act of ir sals — V S. 14 lity of Arts	mortgagor Vbether o . 147 and	r—Suit n samo 192	A 148 N 11 B 14 N 11 A 192 N A 14 A 147 N	3 2 7
——Foreclo (a) Si (b) S ——Foreclo (a) A (b) S	mortgagor sure or sale uit by mortgage deprivation of e by mortgagee i cause of action uit for—Limits suro, suit for— Liplicability of ttarting point	ecnrity by wron for foreclosure of for purposes of tion—Applicable Limitation	ogful act of ir sals — V S. 14 lity of Arts	mortgagor Vbether o . 147 and	r—Suit n samo 192	A 148 N 13 B 14 N 11 A 192 N	3 2 7
——Foredo (a) S ——Foredo (a) A (b) S ——Interes	mortgagor sure or sale uit by mortgage deprivation of e by mortgage i cause of action uit for—Limite sure, suit for— applicability of starting point it	eenrity by wroter for foreclosure to for purposes of tion—Applicable Limitation Arts. 147 and 1	ogful act of ir eals — V S. 14 Nity of Arts 32 distingui	mortgagor Vbether o . 147 and shed	r—Suit n samo 132	A 148 N 11 B 14 N 11 A 192 N A 14 A 147 N	3 2 7
——Foreolo (a) S (b) S ——Foreolo (a) A (b) S ——Interes ——Interes (a) A	mortgagor sure or sale uit by mortgage deprivation of e cause of action uit for—Limits suro, suit for— pplicability of tarting point it fortgage docur principal and i	eenrity by wrote for purposes of the Applicabilition—Applicabilition—Applicabilition Arts. 147 and 1 ment containing afterest secured	ogful act of reals — V S. 14 dity of Arts 32 distingui personal by mortcage	mortgagor Vbether o .147 and shed Provenant	r—Suit n samo 132 132 N to pay	A 148 N 1; S 14 N 1; A 182 N A 14 A 147 N 3; A 147 N	3 2 7
——Foreolo (a) S (b) S ——Foreolo (a) A (b) S ——Interes ——Interes (a) A	mortgagor sure or sale uit by mortgage deprivation of by mortgages by mortgages cause of action uit for—Limits sure, suit for— piplicability of tarting point if lortgage docur principal and ii	eenrity by wrote for leaves of the Applicabilition Applicabilition Arts. 147 and 1 ment containing interest secured to pay prince	ogful act of r sale — V S. 14 dity of Arts 32 distingui personal by mortgage	mortgagor Vbether o 147 and shed Provenant a — Suit	r—Suit n samo 132 132 N to pay on per- Suit to	A 148 N 1; S 14 N 1; A 182 N A 14 A 147 N 3; A 147 N	3 2 7
——Foreolo (a) S (b) S ——Foreolo (a) A (b) S ——Interes ——Interes (a) A	mortgagor sure or sale uit by mortgage deprivation of e by mortgage i cause of action uit for—timits sure, suit for— typheablity of thatring point it fortgage docur principal and i conala corenan conforce person	eenrity by wrote for foreclosure in for purpose of tion—Application—Arghitation Arts. 147 and 1 ment containing alterest secured to pay prine ally payment of	ogful act of reals — V S. 14 S. 14 S. distingui spersonal spersonal spersonal ime- tinal time- f interest fr	mortgagor Vbether o 147 and Shed Provenant a — Suit arred — I	r—Suit n samo 132 132 N to pay on per- Suit to within	A 148 N 1; S 14 N 1; A 182 N A 14 A 147 N 3; A 147 N	3 2 7
——Foreolo (a) S (b) S ——Foreolo (a) A (b) S ——Interes ——Interes (a) A	mortgagor sure or sale uit by mortgage deprivation of e by mortgages in cause of action uit for—Limite sure or suit for— upplicability of larting point to tagge door principal and if eonal covenan enforce person eix years of s	eenrity by wrote for purposes of the Applicabilition—Applicabilition—Applicabilition Arts. 147 and 1 ment containing afterest secured	ogiul act of reals — V S. 14 dity of Arts 32 distinguis v personal of the mortgage in all time by increase for interest for within twel-	mortgagor Vbether o .147 and shed A covenant a — Suit arred — i illing due	r—Suit n samo 132 132 N to pay on per- Suit to within	A 148 N 1; S 14 N 1; A 182 N A 14 A 147 N 3; A 147 N	32714

Mortgage—Interest—(Contd.)	
(b) No provision for payment of interest after date fixed for pay-	
ment of principal - Post diem interest - Noo-payment,	
if continuing breach of contract to pay	8 23 N 8
(c) Suit for-Limitatioo	A 132 N 12
(d) Whether charge on mortgaged property	A 132 N 12
-Invalid under Tenancy laws - Whother can be used as acknow-	a
ledgmeet of liability in suit on original cause of action	
— Meaning of, within Art. 147	A 147 N 3
Mortgago decreoExecution ofAttachment, if necessary	A 11 N 18
—Mortgago decree in Original Side of High Court — Application for	
personal decree—Limitation	A 181 N 6
-Mortgago doed - Dolault clausn in martgage doed providing, on	
failure of mortgagor to pay within cortain term mortgagoe should	A 148 N 7
hocome absolute nwner—Effect	A 140 N 1
Mortgagee	
(a) Dispossession of mortgagor by stranger who remains in	
adverso possession for 12 years — Only right th equity of	S 28 N fi
redemption and not that of mortgages is extinguished (b) Interest of — Whether immovable property within Art. 141:	A 141 N 11
(c) Meaning of	A 147 N 3
(d) Mortgago of property after mortgagor is ousted from pro-	
porty by strangor-Mortgagee, if has independent caose of	
actioo against stranger	89N7
(e) Mortgage of trust property from express trustee with notice	
of trust - Mortgageo receiving interest from trustee-	
Mortgages, if constructive trustee for beneficiary in regard to interest received by him	8 10 N 7
(el) Mortgagee from vataodar cootinuing in possession after	D 10 1.
vatandar's death — Title acquired by mortgagoe by adverse	
possession against successors, whother that of mertgagee :	A 148 N 9
(f) Mortgagee getting into possession of mortgaged property—	
Mortgagee subsequently dispossessed by mortgagor — Suit	A 135 Ñ 2
for possession by mortgagee—Limitatioo	A 100 11 2
(g) Mortgagee in possession after satisfaction of mortgage— Whether trustee S 2 Cl 11 N	9 · S 10 N 14
	0, 13 20 2.
(h) Mortgagee of occupancy bolding—Structure put up by, with- out landlord's consent—Suit for romoval—Limitation	A 120 N 10
(i) Partial failure of consideration for mortgage — Possession of	
mortgagee under mortgage is as mortgagee within meaning	
of Art. 148	A 148 N 2
(1) Person voluntarily paying off mortgage and getting posses-	
sion - His possession is not that ni mortgagee within	A 148 N 2
Art. 148	11 110 1
(k) Possession of (i) Continuance in possessinn by mortgagee after expiry	
of mortgage is in character of mortgagee and not	
under claim of full nwpership	A 148 N 4
(ii) Decree of Settlement Court declaring mortgages to he	
nwner of property changes character of mortgagee's	A 148 N 4
possession (in) Default clause in murtgage deed providing mortgagee	
to become absolute owner on failure of mortgager to	
an pecomo nosoraro ovinci on manto or man-5-5	

A 148 N 5

GENERAL INDEX Mortgage -- Mortgagee -- Possession of -- (Contd.) pay within fixed term-Mortgageo's possession is only that of mortgagee oven on default A 148 N 7 (iv) Default clause in mortgage deed providing mortgagee to become absolute owner on failure of mortgager to pay within fixed term - Mortgagor consenting it to become so from certain date - Mortgagee's possession will become that of full owner from such date A 148 N 7 (v) Default clause in mortgage deed providing mortgagee to take possession in his own right on failure of mort. gagor to pay within certain date - Mortgagee taking possession - His possession is in assertion of full A 148 N 7 (vi) Fact that decree for redemption is obtained against mortgagee does not change character of his possession as mortgagee ... A 148 N 10 (vii) Enreclosure decree passed against mortgagor - Extension of time for payment on condition that possession should be delivered to mortgages till payment -Possession of mortgagee is that of absolute owner from expire of extended term A 148 N 4 (vin) Mere contract to sell equity of redemption in favour of usufructuary mortgagee does not alter character of possession of mortgagee A 148 N 5 (ix) Mere fact that mortgage is discharged out of usufruct or otherwise does not change character of mortgagee's possession though he continues in possession after discharge A 148 N 4 (x) Mere order in mutation proceedings entering mortgagee's name as proprietor does not change character of mortgagee's possession ... A 148 N 4 (xi) Mortgageo allowing Government revenue to fall into arrears and purchasing property blmself at sale for arrears-His possession continues to be that of mort. ' A 148 N 4 (xii) Mortgagee cannot by merely assorting for 12 years that mortgage was for larger amount prescribe to hold as mortgagee for larger amount A 148 N 4 (xiii) Mortgagee entering into possession as mortgagee cannot convert nature of possessing into that of full owner by merely asserting absolute title A 148 N 4 (xiv) Mortgagee having power of sale out of Court pur-chases property himself at sale—Mortgagee's posses. sinn after sale is that of mortgagee A 148 N 4 (xv) Mortgagee in possession as auch-Subsequent proceed. ings for foreclosure turning out invalid-Mortgagee's possession does not become that of full owner A 148 N 6 (xvi) Mortgagee not entitled to possessing under mortgage. taking possession under foreclosure proceedings which are invalid - His possession is not as mortgagee but under claim of ownership (xvii) Mortgagee obtaining transfer of equity of redemption A 148 N 6

from third party unauthorized - Mortgagee's posses.

sion is not affected by transfer

2012		CLUI		424		
Mortgage-M	ortgagee—Poss	ession of-	_(Contd.)		
(xvii	ı) Mortgagee tal fully—His p				wrong-	A 148 N 4
(xi:	Mortgagor's o had does no	laim in p teoable n	rior suit nortgages	to declare m to prescribe		
(x:	mortgaged pr One of co-mor				mption	A 148 N 4
					. :	A 148 N 5
				by mortgagee i		
(1) D	into possessio	n as owner	-His po	- Mortgagee e essessioo is adv	erse	A 148 N 4
	chase by, of pro vil P. C.	perty in c	ontraveu	non of U, 34,	r. 14,	
(i) Effect	***	•••			A 148 N 8
(i	 i) Sale does not mortgagee 	relievo m	ortgagee	of his obligat	ions as	A 148 N 8
(1i	i) Sale not void		able to be	e sot aside at in		
G.	of mortgagor Sale set aside		ngor by	nroner applies	tion_	A 148 N 8
	Parties conti	nue as mor	tgagor an	d mortgagee	,,,	A 148-N 8
(m) Suit	against 1) Mortgagee in	possession	of most	eased meanages	e with.	
	out title-Ar	ticle 148 ı	napplical	ile	•••	A 148 N 4
(1	i) Mortgagee ta Suit against !	king posse	ssion un	ler default cl	ause-	. 1
	inapplicable	,	overy or	biolieras — 11		A 148 N 7
(ii	 To recover postion 	ssession of	mortgage	d property—I	imita.	A 148
(n) Suit	against third pe	rson for r	ecovery o	f money recei	ved by	
hi	n from mortgag	or and w	bich was	due to mortg	agee-	A 132 N 11
	mitation by mortgagee a	agingt trace	***	other harred	hv faat	A 192 N 11
th	it trespasser has	s perfected	his title	against morts	gagor:	A 132 N 17
(p) Suit	by mortgagee a spossession of m	nd purcha	se of pro	perty in execu	tion—	
str	anger at time of	f execution	sale —	Mortgagee's s	uit for	7 0 N I
po	ssession against s	traoger —	Cause of	action, when a	rises :	89N7
(p)	to eject mortge Limitation	igee on gro	ood tust	mortgage is i	invariu.	A 120 N 4
(r) Suit	to enforce agai dertaking to pay	nst purcha mortgage	ser of mo	ortgaged proper — Maintainabi	rty an lity of	A 116 N 2
su: (s) Wh	t o 1s, within mea:	ning of Art	134—II	lostrative cases	3	A 134 N 13
Mortgago			er	la dabta for	which	
mu	ure of mortgage rpose certain sur	n was left :	io mortga	gee's hands —	Mort-	
ga	or himself com	elled to ps	v off debt	s — Subsequer	nt suit	A 61 N 8
				prior mortga	igee	
				r for compen	sation	A 116 N 22

	2010
Mortgage - Mortgagor - (Contd.)	
(c) Personal hability of — Whether is destroyed by fact that	
payment of amount is collaterally secured by the mortgage:	
(d) Sale of portion of property mortgaged—Mortgager afterwards	
stating that mortgage is undischarged — Statement, if hind-	
ing on vendee	S 19 N 35
(e) Suit by mortgagor to recover possession of property from	
transferce of mortgagee—Transferce obtaining possession	
not on date of transfer but subsequently—Limitation, if	
runs from date of transfer	S9N8
(f) Surplus collections received by mortgagee—Suit by mortgager	
after satisfaction of decree	
(1) Limitation	A 105
(a) Applicability of Art. 105 and Art. 109	
(b) Starting point	A 105 N 1, 4
(c) Where liberty to file fresh suit for accounts or profits is given in prior suit for redemption	A 705 NO
	A 105 N 2
(d) Where mortgager has re-entered into possession without suit for redemption	4 105 15 0
	A 105 N 2 A 105 N 2
(ii) Maintainability of entt (iii) Suit for compensation for trees wrongfully cut by	A 100 N 2
mortgagee, whether suit for collections made by mort.	
	A 105 N 3
(iv) Suit for redemption together with claim for surplus	V 100 M 9
profits—Such claim, whether barred—Limitation	A 105 N 2
(v) Suit, whether barred by prior suit for redemption	A 105 N 2
() ()	A 105 N 3
	A 105 N 3
Personal decreo	4 100 N 1#
(aa) Application for—Not one for execution	A 182 N 15
(a) Mortgage not hinding on sons of mortgager—Mortgage con- taining indemnity clause—Suit for personal decree against	
sons of deceased mortgagor against assets of mortgagor in	
sons' hands—Whether lies	A 116 N 20
(b) Mortgagee combining claim against mortgaged property and	12 220 11 20
for personal decree—Limitation applicable	S3N4
(c) Suit for	2014 4
(i) If lies when personal remedy barred at the date of	
(1) It has when personal remark barron as the days of	S3N14
· · · · · · · · · · · · · · · · · · ·	. A 132 N 18
	A 116 N 21
nita-	
tion_Starting point	A 120 N 52
-Personal remedy-Whether destroyed by fact that payment of	
amount is secured collaterally by the mortgage	A 116 N 19
	A 134 N 17
(h) Good faith of transferce, whether must be proved	A 134 N 10
(c) Limitation—Starting point	A 134;
A 134 N 1; A 134 N 12	
(d) Mortgage, if should be une with possession	A 134 N 14
(e) Mortgagee transferring mortgaged property but subsequently	
getting retransfer	A 134 N 15

2014 GENERAL INDEX	
Mortgage Possession of mortgaged property, etc (Contd.)	
(f) Mertgager's estate in bands of limited ewner at the time of transfer by mertgagee—Suit for possession by person suc-	
ceeding to estate on termination of limited estate-Limita-	
tien	A 134 N 19
(g) Nature of transfer within Art. 134	
(1) Burden of proof as to	A 134 N 11
(ii) Sub-mertgage, whether transfer	A 134 N 11
(iii) Transfer, whether must purport to be a sale	
(h) Object of prescribing abort period of limitation for such suit:	
(i) Proof of subsisting mertgage at the time of transfer and	
transfer by mertgagee essential for applicability of Art. 134	4 104 NT 10
Illustrative cases	A 134 N 18
(i) Property mertgaged by mertgagee	A 134 N 1
(k) Property nominally transferred	A 134 N 8
(1) Preperty permanently leased by mortgagee	
(m) Right to sue barred under provious Acts, whether revived	
under amended Act	A 134 N 16
(n) Subsequent knewledge on part of transferce of transferor's	
limited rights, whether will prevent time running in favour	A 134 N 10
of traosferco	A 184 N 8
(c) Suit against representative of transferoe—Limitation	V 194 W 0
(p) Suit for possession against transferee of auction purchaser in	A 134 N 9
court sale of mortgaged property—Limitation	A 130 N 12
(q) Transferce getting possession subsequent to transfer	V 100 T/ 72
(r) When transfer becomes known to plaintiff—Burden el proof as te date el plaintiff's knowledge	A 134 N 16
Possession of immerable property mortgaged	
	A 135 N 5
(a) Suit, against whom maintainable	A 100 M O
(b) Suit by mertgageo (i) Applicability of Art. 135 and Art. 146 to such suit	A 146 N 2
(n) Befere Court established by Royal Charter—Limita-	
tien—Starting point	A 146 N 3
(iii) For ejecting mertgagor to whom mortgaged property	
has been leased back—Limitation	A 135 N 2
(iv) Instituted in Court not established by Royal Charter-	5; A 135 N 2
Limitation A 13 (v) Limitation—Starting point A 135; A 135 N	9: A 135 N 7
(vi) To enforce stipulation in instrument of mortgage that	-,
mertgager should give possession to mertgagee -Limi-	
tation	A 135 N 4
(vii) Where mortgage instrument recites that possession has	A 135 N 4
been given to mortgageo—Limitation	A 100 IV =
(viii) Where mortgagee is entitled to possession only upon	A 135 N 2
fercelosure	
is subsequently dispossessed by mortgagor—Limita-	
tion	A 135 N 2
Prior and subsequent	
(a) After subsequent mortgage, mortgagor etating that prior	
mortgago remains undischarged—Whether binding en sub-	8 19 N 35
sequent mortgagee	0 10 11

Mortgage-Prior and subsequent-(Contd.)	
(b) Prior mortgagee in rossession, whether can set up his mort-	
gage as shield against subsequent mortgages suing on his	
mortgage	A 132 N 26
(c) Right of subsequent mortgages to sue for recovery of money	
under his mortgage barred by limitation — Whether he can sue for redemption of prior mortgage	A 132 N 26
—Puisne mortgagee	A 102 H 20
(a) Puisne mortgagee paying off prior mortgagee -Suit by puisne	
mortgagee against mortgagor to recover amounts paid to	
prior mortgages personally from mortgagor — Limitation :	A 61 N 7
(b) Suit for redemption and possession against prior mortgagee	
and mortgagor—Limitation	A 135 N 6
(a) Acknowledgment by mortgagee of mortgage and of his liab.	
lity to be redeemed -Whether may be contained in deed of	
sub-mortgage or other document executed in favour of a	
third person	6 19 N 46
(h) Person having right to redeem property in possession of	
another under mortgage and obtain possession—Right to sue for possession—When arises	S 28 N 2
(c) Redemption of portion of mortgage—Whether allowed under	D 20 R 2
the law	8 21 N 18
Redemption, equity of	
(a) Adverse possession of -See under Adverse possession.	
(b) Invalid transfer of, to mortgagee—Effect: A 142 & 144 N 2 (c) Oral sale of—Suit for pre-comption	8; A 148 N 5 A 10 N 1
(d) Sale of—Whether alienation	11 120 11 04
•	A 148 N 5
(f) against mortgagee for possession of mortgaged property —	
Limitation	A 148 N 5
(g) Under usufructuary mortgage, sold in execution of decree	
against mortgagor Snit by phrchaser for redemption and	
possession - Suit is governed by Art. 148 and not by	4 440 44 60
Art. 137 (b) Whether can be conferred by way of remainder	A 148 N 22 A 140 N 3
(b) Whether can be contened by way of femaliator	V 140 H 2
mt beirs—Suc-	
	A 148 N 4
(b) What is	A 148 N 1a
(c) When accrues	A 148 N 18
paid in month of any Jeth within ten years the mort-	
paid in month of the Jeth within ten years the mort-	
gage would be redeemed but on failure within 10	
gage would be redeemed but on failure within 10 years mortgagee would become absolute owner —	
gage would be redeemed but on failure within 10 years mortages would become absolute owner— Right to redeem, whether accrues in first Jeth suc-	å 140 N 10
gage would be redeemed but on failure within 10 years mortgages would become absolute owner — Right to redeem, whether accrues in first Jeth succeeding date of mortgage	A 148 N 18
gage would be redeemed but on failure within 10 years mortgagee would become absolute owner— Right to redeem, whether accrues in first Jeth succeeding date of mortgage (ii) Mortgage deed providing that mortgagee should retain possession and realize profits and that land was to be	A 148 N 18
gage would be redeemed but on failure within 10 years mortgages would become absolute owner Right to redeem, whether accrues in first Jeth suc- ceeding date of mortgage (ii) Mortgage deed providing that mortgages should retain possession and realize profits and that land was to be released it mortgage repaid money — No date for	A 148 N 18
gage would be redeemed but on failure within 10 years mortgages would become absolute owner— Right to redeem, whether accraes in first Jeth suc- ceeding date of mortgage (ii) Mortgage deed providing that mortgages should retain possession and realize profits and that land was to be released it mortgager repaid manuey. No date for redemption fixed — Redemption does not accrue till	
gage would be redeemed but on failure within 10 years mortgages would become absolute owner Right to redeem, whether accrues in first Jeth suc- ceeding date of mortgage (ii) Mortgage deed providing that mortgages should retain possession and realize profits and that land was to be released it mortgage repaid money — No date for	A 148 N 18 A 148 N 18 Lim. 195

2010	,	Oznama zna			
Mor	tgage	Redemption, right of When accr			
		(iii) No date fixed in mortgage deed for money—Right to redeem scorne (iv) Time fixed for redemption in mo —Right of redemption canno	s on execution of ortgage deed very	deed long	A 148 N 18
		clause amounte to be a clog on			A 148 N 18
		mption, suit for			
	(a)	Accession to mortgaged property - 1	Suit by mortgagor	for	
		accession-Art. 148 inapplicable		•••	A 148 N, 16
•	(n)	Admission of mortgage by son of mortgage right — Son inh			
		which subsequently passes to another			
		against such person— Acknowledgm			
		mortgagee-Whother can be relied or		•••	S 19 N 34
	(c)	Against mortgagee's assignee-Art. 148	s, whether applies		A 148 N 19
		Application by mortgagor for allowing			
į.		-Whether one in execution of prelim	inary decree	•••	A 182 N 13
	(d)	Application for final decree under O.	. 34 R. 8, Civil P.	. C.	E
		—Limitation	•••	•••	A 181 N 5
,		Burden of proof			A 148 N 23
. 1	. (f)	By mortgagor who has previously abar	idoned the land	Suit	A 148 N 12
•	(a)	hrought within prescribed period—Me By prior mortgages to onforce his mort	nntainability		V 140 V 77
	(8)	ing puisne mortgagee—Suit thereafte	r by nuisno mortes	idea	
	. •	to redeem prior mortgage—Art. 148,	whether will apply		A 148 N 21
	(h)	By puisne mortgageo-Suit by him on	bis mortgage with	out	
Ŧ		impleading prior mortgagee - Puisi			
		purchasing mortgaged property—Suit to redeom prior mortgage—Art. 148 a	hy puisno mortga	gee	A 148 N 21
	(ı)	By puisne mortgagee to redeem prio	r mortgage—Art.	148	
		applios		•••	A 148 N 21
	` (₃)	By representatives of deceased mortga		a -	A 12 N 2
	(1.)	Suit, whether really one for setting as By reversioner of Hindu female who	ide sale	ber	A 1211 2
	(8)	usufructuary mortgage for necessity—	Limitation	шу	A 141 N 6
	(1)	Decree for redemption obtained against	t mortgagee - Seco	bnc	
		suit for redemption—Limitation	***	•••	A 148 N 10
	(m)	Dispute regarding amount due referred	to arbitration—De	:C1-	
i .		sion of arhitrators that mortgagees al for certain number of years—Suit for	redemption by enfo		
		ing award—Limitation		•••	A 148 N 14
	(n)	Equity of redemption transferred by	person alleged to	he	
		adopted son of mortgagor after latte	r's death Adopt	ion	A 148 N 5
			of redemption		21 220
			side within the		
		years of attaining majority - He can	not redeem it with	*	.A 148 N 5
•	6	longer period conferred by Art. 148	•••	•••	
	(P) In case of lekha mukhi mortgage in Pu Starting point	njao rimitation		A 148 N 18
	(q)	Interest of mortgageo vesting in Hindu	widow - Transfer	of	
	_	mortgagee interest by widow to person	on in wbom is vest	ed	
		the equity of redemption - Transfer	set aside on widow	V S	

Mortgage-Redemption, suit for-(Contd.)	
death-Suit for redemption - Period during which mort.	
gagee's interest vested in plaintiff, whether can be deducted	
-Plaintiff, if gets fresh cause of action	S 9 N 12
(r) Laches of mortgagor in not enforcing his alleged rights for	
many years — Whether evidence against existence of those	
rights	A 148 N 24
(s) Limitation	
(1) Art. 148 applies to all mortgages	A 148 N 2
(ii) Starting point	; A 148 N 18
(t) Manager of joint Hindu family, if can give discharge in	
regard to suit on behalf of whole family	S 7 N 18
(u) Mortgage amount paid off but mortgages in possession—Suit	
for possession by mortgagor is not suit for redemption	A 148 N 1a
(v) Mortgage in favour of joint Hindu family - Suit, if can be	
rendered time barred as against all members of family by	
discharge given by manager	57 N 18
(w) Mortgago with possession of rights in land which later, were	
commuted into fixed money allowance to be paid from Gov.	
ernment treasury - Mortgagee receiving payments and	
giving to Government receipts eigned by him as mortgagee	
-Receipts, if acknowledgments to save limitation for suit	C 10 37 40
for redemption (π) Mortgage without possession — Provision in mortgage that if	S 19 N 46
amount due not paid by end of certain year mortgages	
should take possession as absolute owner—Possession taken	
by mortgagee — Suit for redomption by mortgager after 60	
years from the date for payment—Suit barred	A 148 N 18
(y) Mortgagee anthorized to pay bimself out of usufruct-Mort.	11 110 11 10
gage discharged before expiry of term - Snit by mortgagor	
for recovery of possession on discharge - Limitation-	
Starting point	A 148 N 18
(z) Mortgagee, if can claim mortgage money from plaintiff in	
redemption suit, even if suit for money would be barred	83N 15
(z¹) Mortgagee in possession as such — Subsequent invalid pro-	
ceedings for foreclosure — Suit against mortgagee for reco-	
very of property-Limitation	A 148 N 6
(z2) Mortgageo purchasing property in contravention of O. 34	
R. 14, Civil P. C. Sale not set asido by mortgagor within prescribed period 	
-Mortgagor cannot sue to redeem ignoring sale	A 148 N 8
(ii) Salc set aside by mortgagor — Suit by mortgagor for	A 140 N O
redemption—Limitation	A 148 N 8
(z3) Mortgagor's covenant to pay other debts also-Mortgagee, if	
can defend suit by claiming such debts although suit to	
enforce them is barred	S 3 N 15
(z4) Of properties sold for pre-existing mortgage 12 years before	
suit—Maintainability	A 126 N 10
(z) One of co-mortgagors transferring equity of redemption to	
mortgagee—Sunt by other co-mortgagors—Limitation	A 148 N 5
(z ⁶) Person made to sign document by misrepresentation that it is mortgage deed while in fact it is sale deed—Suit by such	
person for redemption on ground that sale is void—Limita-	-
tion too	A 148 N 14
	110 11 14

2010	GENERAU INDEA		
Mort	gage-Redemption, suit for-(Contd.)		
	(z ⁷) Section 20 does not apply		S 20 N 4
	(z8) Special or local law—Advantage of S. 6, Oudh Estates	Act-	
	(29) Special or local law—Mortgagor may redoem before expl	rv of	A 148 N 26
	term under Dekkhan Agriculturists' Relief Act (17 of 1	879):	A 148 N 26
	(z ¹⁰) Suit barred—Mortgagee becomes nwner of property (z ¹¹) Suit cootaiolog also claim for surplus profits — Such c	laim.	A 148 N 25
	whether barred by suit for rodemption	•••	A 105 N 2
	(z ¹²) Tracefer for consideration by mortgagee professiog his to be nwner	mself	
	(i) Right to redeem arising after mortgagor comic	g to	
	know of transfer by mortgagee - Applicabilit		
	Art. 134	•••	A 148 N 19
,			A 148 N 19
	to redeem bas not accrued	right	A 148 N 19
	(c) Suit is one for possession on redemption of n	nort-	
	gage (d) Transferee contending that suit is governed	a	A 148 N 19
	Art. 134—Burden of proof		A 148 N 19
	(213) Trespassor dispossessing usufructuary mortgagee — against trespassor for redemption—Art, 148 applies	Snit	2 & 144 N 85
	(z14) Upon dismissal of mortgegor's application for redemp	tion	
	under Puojab Redemption of Mortgages Act — Limitat (z ¹⁵) Usufructuary mortgage by Hindu of joint family proper	ion:	A 148 N 2
	Subsequently equity of redemption also sold to mortgage	-08	
	Suit to eet aside sale by sons not brought within 12 y	ears	
	under Art. 126 — Suit to redeem under Art. 148 not m	ain-	A 148 N 20
	(z16) Whether bars subsequent suit for accounts or surplus pro	fits	A 220 11 10
	agaiost mortgagee	•••	A 105 N 2
	(217) Whether one for possession within Art. 137	•••	A 137 N 3
	(z18) Whether one to enforce payment of money charged	on	A 132 N 3
	immovable property	•••	A 132 N 3 A 134 N 3
	(z ¹⁹) Whether one to recover possession within Art. 134 (z ²⁰) Whether suit in respect of property under S. 19	•••	S 19 N 16
	Recewal of	•••	D 10 11 -0
	(a) If gives fresh cause of action		S 19 N 36
	(h) Mortgagee, if entitled to priority over intermediate mo	rt.	
	(a) serving agos, in constitution to proving discrete		S 19 N 36
			A 132 N 15
		•••	A 120 N 12
	Simple mortgage		
	(a) Mortgagor leasing property to eon of simple mortgages		
	Lessee authorized to pay rents to simple mortgage	8	
	Receipt of rent, if amounts to payment of interest a	iod	g 20 N 28
	priocipal as provided in lease (b) Suit for sale of mortgaged property—Limitation	•••	A 135 N 2
	Subrogation	•••	
	(a) Person paying off mortgage in bona fide belief that be	ia	
	entitled to equity of redemption is subrogated to right	of	
	mortgagee	•••	A 148 N 2

Mortgage-Subrogation-(Contd.)
(b) Person paying off tunn barred mortgage, whether gets any
right A 132 N 14 F N 2
(c) Person subrogated to rights of puisne mortgagee suing to
enforce mortgage—Whether may set up prior mortgage as
shield when suit to enforce barred S 3 N 15 (d) Stranger paying off usufructuary mortgage—Whether sub-
rogated to rights of mortgages A 142 & 144 N 85
(e) Suit for enforcement
(1) Decree obtained on mortgage at the time of payment
-Limitation-Starting point A 132 N 14
(11) Limitation—Starting point A 132 N 14
Suit for mortgage money
(a) Claim to recover mortgage amount under S. 68, Transfer of
Property Act—S. 20, if applies S 20 N 4
(b) Fraudulent mortgage of sir lands—Limitation A 116 N 22
(c) Limitation A 62 N 7 (d) Money paid upon registered mortgage but mortgaged pro-
perty subsequently sold for payment of municipal taxes
free of mortgage-Limitation A 97 N 10
(e) Mortgage for term certain with default clause-Limitation
-Starting point A 132 N 24
(i) On ground that mortgagee has been defrauded by defendant
and made to enter into mortgage transaction—Whether suit for breach of contract A 116 N 1
(g) Out of surplus sale proceeds paid to mortgagor where mort.
gaged property is sold for arrears of revenue—Limitation A 62 N 21
-Snit for profits
(a) Mortgage by insolvent — Mortgage appulled by Insolvency
Court—Application by official assignee for rents and profits
from mortgagee, whether equivalent to suit for profits
wrongfully received A 109 N 12
Suit for sale
(a) Limitation
(i) Applicability of Art. 147 and Art. 132, distinguished A 147 N 1 (ii) Starting point A 147 N 4
(b) Whether suit for possession within S. 28 A 147; A 147 N 4
-Suit to enforce
(a) Against substituted security—Lamitation A 132 N 11
(b) Claim by mortgagee disallowed under Civil P. C., C 21 R. 62
—Subsequent suit to enforce mortgage—Limitation A 132 N 27
(c) Limitation - Appliesbility of Art. 132 and Art. 147 distin-
guisbed A 147 N 1 (d) Mortgage executed by Hindu father—Suit against father or
his sons—Limitation A 132 N 9
(c) Mortgage of turn of worship-Limitation A 120 N 41
(1) Mortgage to secure loan in kind—Limitation A 116 N 23; A 132 N 21
(g) Suit to enforce personal liability barred, if precludes suit to
enforce mortgage S3 N 14
Suit to enforce lien-Not one to enforce right to possession and not governed by Art. 11-A N 9
Suit to set aside—Mortgago of joint family property by Hindu
father—Suit by son to set aside—Limitation A 148 N 20

2950	GENERAL INDEX	
Morte	age_(Oontd.)	, , , ,
S	nit upon	r)
	(a) Accrual of mortgagee's cause of action for suit to enforce	
	mortgage—Cause of action, if affected by fact that mort- gaged property is submerged under water	S 9 N 11
	(b) Extension of time—Mortgagee directed to pay mortgage	5 5 H 11
	amount immediately to holder of decree against mortgagor	
	and obtain receipt-Mortgagoe paying the money into	
	Court more than a year thereafter-Payment, if has the	
	offect of extending time	S 20 N 18 S 22 N 17
	(c) Joinder of parties—Principles governing (d) Limitation	5 22 N 11
	(i) Starting point—Mortgagee, whether gets fresh cause	
	of action where conveyance of portion of mortgaged	1.7
	property in discharge of claim under mortgage subse-	
	quently turns out to be inoperative	A 132 N 25
	(ii) Suspension of—Time, if suspended by mortgaged pro-	A 132 N 25
	perty becoming submerged under water (e) Mortgage executed by deceased Hindu father—Mortgage	A Lpa It as
	binding on son—Suit against son—Limitation	A 120 N 2
	(f) Necessary parties not joined-No objection taken to non-	
	joinder-Effect of	S 22 N 25
	(g) Person interested not made party to snit—Subsequent suit	A 132 N 16
	against such person—Limitation—Starting point (b) Suit barrod by limitation—Right of mortgages, whether	
	extinguished by operation of S. 28, Limitation Act	A 132 N 26
	Usufructuary mortgage	
	(a) Equity of redemption - Whether can be advorsely possessed	
		42 & 144 N 7
	(b) Mortgage satisfied out of usufruct—Possession taken by one of co-mortgagors — Suit by other co-mortgagors is not	
	governed by Art. 148	A 148 N 3
	(c) Right to redeem	
	(1) Whether admits of physical possession	A 10 N 7 S 28 N 5
	(ii) Whether property for the purposes of S. 28	S 28 N 0
	(d) Suit by mortgagee	
	(i) Covenant in mortgage deed that mortgage money is recoverable in case of default on part of mortgagor in	
	delivering possession — Snit for mortgage money—	
	Limitation	A 116 N 22
	(ii) For enforcing stipulation in mortgage instrument to	A 135 N 4
	give him possession—Limitation	A 120 N 2
	(in) For equity of redemption—Limitation	A 120 A P
	(iv) For mesne profits during period he was kept out of possession—Limitation	A 116 N 22
	(v) For mortgage money on failure of mortgagor to deliver	
	possession—Limitation	A 62 N 7
	(vi) For profits during dispossession by mortgagor — Limitation	A 109 N 6
	(vii) For refund of money advanced on ground that property	A 116 N 22
	was already mortgaged with possession—Limitation: (viii) For rent of mortgaged property leased back to mort-	
	gagor himsolf—Limitation	A 110 N 7
	5 5	

Mortgage-Usufructuary mortgage-Suit by murtgagee-(Contd	.)	1
(ix) Mortgage of watan lands—Death of mortgagor—Su		**
	,	
•		A 116 N 22
(x) N	•	
superior title created by mortgagor—Suit for mortga	ge	,
money-Limitation-Starting point	••	A 116 N 22
(e) Suit by mortgagor for recovery of mortgage money—Lin	ů-	'
tation	•••	A 116 N 22
	••	A 148 N 1a
Usufructuary mortgagee		
(a) Covenant in mortgage deed that mortgagee should pe		
Government revenue-Default by mortgagee-Portion		
mortgaged properties sold for arrears of revenue - Suit 1		
mortgagor against mortgagee for compensation —Limitatio		A 116 N 22
(b) Failure of mortgages to give back possession — Whether	a	
continuing breach of contract	•••	S 23 N 9
	•••	A 110 N 7
(d) Lease by mortgages to mortgager for two years with agre ment to charge lease amount on mortgaged property.	ð•	
After two years, mortgager becoming tenant from year		
year by mortgagoe accepting ront — Subsequent suit i		
mortgagee for rent—Limitation	y	A 110 N 7
(e) Leaso to third person by mortgagee—Mortgage redeemed t	···	11 110 11
mortgagor.—Suit by mortgagor for rent from lessee, wheth	or 1	
maintainable		A 110 N 7
(f) Mortgagee dispossessed by mortgagor - Suit by mortgag	ee.	
for profits received by mortgagor-Limitation		A 109 N 6
(g) Mortgagee's duty to account for rent and profits in redem	D•	
tion suit even if separate suit for same would have be	n	
barred		S 3 N 14
(b) Receipt of ronts and profits by mortgages—Whether amoun	ts	
to payment for purposes of S. 20	••	S 20 N 28
(1) Suit for redemption—Usnfructnary mortgagee also holding		
simple mortgage—Whether he can in defence to suit for	or	
redemption of usufructuary mortgage claim that simp		1 190 37 00
mortgage should also be redeemed	••	A 132 N 26
(a) Person entering into possession under void mortgage—Befo		
12 years, property sold to him under void sale deed—H		
possession from date of sale becomes that of owner		A 148 N 9
(b) Suit on		
(1) Mortgagee entering into possession under void mortgage	9	
—Suit by mortgagor against mortgagee as trespass	er.	
for recovery		
(a) Art. 148 inapplicable	•••	A 148 N 9
(b) Limitation—Starting point	••	A 148 N 9
 (ii) Person entering into possession under void mortga —Suit against bim after 12 years for recovery of pr 		1
perty—Limitation	U-	A 148 N 9
(c) Title acquired by—Person entering into possession under vo	id'	.1 110119
mortgage can only prescribe for mortgagee's title	,	A 148 N 9
Whother alienation within Art. 125		A 125 N 13
-Whether transfer for valuable consideration within Art. 134-B:	A'	134ABO N 7
•		

Motion
Notice of
Moveable property
-Attachment of in execution of decree-Maveable property put in
custody of sapurdar-Objection to attachment-Court upholding
objection—Suit by objector for recovery—Limitatioo A 143 N 3
-Cooveyed or begoesthed in trust-Afterwards hought for valuable
consideration—Recovery of—Soit for
(a) By beoeficiary to recover trust property pledged with back
-Limitation applicable A 48A N 3
(b) Limitatioo—Starting point A 48A; A 48A N 1
Deposited
(a) Afterwards hought from depositary—Recovery of, from pur.
chaser—Suit for—Limitatioo—Starting point A 48A N 1
(b) Suit for
(i) Agaiost depositary
(a) Allegation of plaintiff, whether sole basis for
ascertaiolog period of limitation applicable to
such suit A 145 N 7
(b) For redemption of pledge—Limitation A 145 N 7
(ii) Against legal representative of deceased depositary-
Limitatioo A 145 N 5 (iii) Applicability of Art. 49 and Art. 145 A 145 N 4
(ii) Applicability of Art. 49 and Art. 145 A 145 N 4 (iv) Limitation—Starting point A 49 N 2; A 145; 145 N 6
—Meaning of, withio Art. 145 A 145 N 2
70 111 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1
——Partition and possession of—Suit for—Limitation A 120 N 30 ——Pawned—See under Pawoee,
Possession of-Suit for
(a) By Hiodu or Mahomedan who is entitled to possession oo
death of Hiodu or Mahomedan female-Limitation-Start.
ing point A 141 N 11
(b) Cases goveroed by residuary Art. 120 A 120 N 11
Recovery of Suit for
(a) By reversioner—See under Reversioner.
(b) Limitatioo—Applicability of Art. 49 and Art. 145 A 145 N 4
- Seizure of, uoder legal process-Suit for compensation - Limi-
tation A 28 N 1
——Specific movemble property
(a) Acquired by misappropriation or conversion—Suit for
(i) Conversion of property, whether must have been dis-
A 48; A 48 N 9
still be in posses-
sion of defendants for applicability of Art. 48 A 48 N 11
(iv) Plaintiff whather most have right to nossession of
property claimed, for applicability of Art. 48 A 48 N 2
(b) Acquired by theft—Suit for
(1) For value of such property as damages—Limitation A 48 N 5
(ii) Limitation—Starting point A 48; A 48 N 5; A 48 N 9
(iii) Moveable property, whether must still be in possession of defendants for amiliability of Art. 48
(in) Distance whether must have right to possession of
property claimed for applicability of Art, 48 A 48 N 2
Ebox 1 number and all annum 13 - 1

Mor

pyeable propertySpecific moveable property(Contd.)		
(c) Conversion of—Suit for compensation		
(1) Successive conversions by more than one person		
Limitation—Starting point		49 N 11
(ii) Successive conversions by same person—Limitation		
Starting point		49 N 10
(d) Cost—Suit for		
(1) Limitation—Starting point A 48; A	48 N 4;	A 48 N 9
(ii) Moveable property, whether must still be in possess		10 37 11
of defendants for applicability of Art. 48		48 N 11
(iii) Plaintiff, whether must have right to possession property for applicability of Art, 48		48 N 2
(e) Injury to		1 30 11 2
(1) Suit by mortgagee for compensation for depreciation	of	
mortgage security through acts of stranger-Lin		
tation	A	49 N 7
(ii) Suit for - Where plaintiff's vessel was injured		
collision with defendant's vessel—Limitation		49 N 7
(in) What is, within Art. 49	A	49 N 7
· Limitatio		49 N 4
1 to movea		1 33 11 3
property—Limitation		49 N 2
(iii) Where possession of owner is unlawful-Limitatio		49 N 4
(g) Reliefs in respect of—Snit for — Limitation — Art. 48 a	ba	
Art. 49, distinguished	A	48 N 2
(h) Suit for		
(1) For title deeds deposited with mortgagee after mo		49 N 9
gage has been redeemed—Limitation—Starting poi (ii) General and specific provisions of limitation		49 N 2
(111) T 1 11 11		A 49
(iv) Where defendant is not in possession or control		4. 17
		49 N 4
(v) Where property deposited is wrongfully detained		
		49 N 2
(i) What is	A	48 N 3
	A	48 N 3
		48 N 3
(iii) Government promissory notes, whether specific mov		
(1) 77 (1) 1 (1) 1 (1)		48 N 3 48 N 3
(v) Idol of Thakur, whether specific moveable property		48 N 3
(vi) Money, whether specific movesble property		48 N 3
(vii) Mortgage deeds, whether specific moveable property	A	48 N 3
(viii) Property which becomes moveable only by act	of	
		48 N 3
(ix) Share certificates, whether specific moveable property		48 N 3
(x) Share in specific moveable property, whether specific moveable property		48 N 3
(xi) Standing crops, whether specific moveable property		48 N 3
(xi) Standing trees, whether specific moveable property		48 N 3
(xiii) Title deeds of property, whether specific movesh	le A	10 11 0
		48 N 3

Moveable property—Specific moveable property—(Contd.)		
 (j) Wrongful taking, injury or detention of—Compensati 	on for	
(i) Meaning of	·	A 49 N
(a) Burden of proof as to "wrongful taking" (b) Limitation		A 49 N (
(k) Wrongful taking or detention of Compensation for-		
(i) Applicability of Art. 48 and Art. 49-Dis	tinetion	
between		A 43 N
(ii) Limitation—Starting point		48; A 48 N 9
(iii) Moveable property, whether must still be in po	ssession	
of defendants for applicability of Art. 45	•••	A 48 N 11
(iv) Plaintiff whether must have right to possession	of pro-	
perty claimed for applicability of Art, 48	٠	A 43 X 2
(v) Where defendant merely causes deprivation of	posses-	
sion of property in bands of plaintiff but d		
himself take or detain property-Limitation		A 43 N 7
(vi) Where plaintiff has no right to possession of p	roperty	
at the time of the wrongful taking or dete		
Limitation		A 48 N 9
(I) Wrongfully taking or detaining—What is	•••	A 45 N 7
m		A 39 N 2
	•••	00
		A 29 N 5
(a) Debt, whether moveable property within Art. 29	•••	A 29 N 5
(b) Money, whether moveable property within Art. 29	***	A 29 N 5
(c) Standing crops, whether movesble property	•••	A 29 M 0
—Whether includes money	•••	A 89 N 6
Wrongful seizure of		
(a) Attachment of standing arons, whether seizure of m	oreable	
property within meaning of Art. 29		A 29 N 5
(h) Attachment of third person's property, whether ac	tionable	
without proof of malice		A 29 N 3
(c) Attachment of third parson's property, whether w	mangfal	
seizore within Art. 29	rougiai	A 29 N 2
(d) Compensation for—Suit for	•••	
(i) Actual seizure, whether necessary for maintain	nahilite	•
of suit	11011103	A 29 N 3
(ii) Applicability of Arts 29, 29 and 36		A 29 N 1
	•••	A 29 N 6
(iii) Compensation claimed—Form of	0 01	21 20 21 0
(iv) Dismissal of suit, whether bars another under	U. 21,	
· R 63, Civil P. C., with claim for damages for	wrong.	
ful seizure as relief consequent to declaration	prayed	A 29 N 8
for	•••	A 29 N 8
(v) Limitation—Starting point (vi) Suit for recovery of amount taken by defendan	of fearm	•• ••
Government treasury, whether one for compa	nantion	
	2734104	A 29 N 6
for wrongful seizure of mayeable property (vii) Suit for seizure of standing crops belonging to p	daintiff	
		A 29 N 5
(viii) Time during which property remains in custodi	a legis.	
whether excluded	,.,,	A 29 N B
(ix) Time spent in prosecuting claim petition in at	taching	** 0
Court whether excluded		A 29 N S

(x) Time spent in suit under Civil P. C., O 21, R. 63, whether there excluded	Moveable property—Wrongful seizure of - Compensatio (Contd.)	n for,	suit for —
(f) Whether means actual bandling of property by person seizing it	ther excluded		
ing it		n seiz-	A 29 N 2
(i) Att. 11 and Art. 29 distinguished	ing it		A 29 N 3
(b) Distraint effected by landlord under provisions of Agra Tenancy Act, whether scieure under logal process A 29 N 4 Mukhtear A 84 N 3 Mukhtear A 84 N 3 Municipality Adverso possession against—In respect of drains on sides of public street—What amounts to A 146A N 5 Suit against—For refund of money logally collected but wrongfully refused to be refunded—Limitation A 62 N 7 Suit by (a) In respect of land entrusted to municipality by Government for management—Limitation A 149 N 6 Mutation A 149 N 6 Mutation A 120 N 30 Mutawalli A 120 N 30 Mutawalli A 120 N 33 Native Prince A 120 N 33 Native Prince Suit for possession—Limitation Suit against—Perrussion of Government—Time taken for obtaining permission—Whether can be excluded in computing period of limitation Suit against—Perrussion of Government—Time taken for obtaining permission—Whether can be excluded in computing period of limitation Suit for, by principal—Limitation—Starting point A 90 N 6 (b) When actionable A 90 N 1; (c) When actionable A 90 N 2 Of deceased agent—Suit for, against legal representative—blain tainability A 90 N 2 Of legal practitioner—When actionable A 90 N 3 Negligence A 90 N 3 Negligence A 90 N 3 Negligence See tunder Delay, occuse of—Sufficient cause—Negligence. —Dismissal of suit on ground that plaintiff was negligence. —Dismissal of suit on ground that plaintiff was negligence. —Dismissal of suit on ground that plaintiff was negligence. —Dismissal of suit on ground that plaintiff was negligence. —Dismissal of suit on ground that plaintiff was negligence. —Dismissal of suit on ground that plaintiff was negligence. —Of pleader or clerk—Party suffering from—Liability in damages: S 5 N 11 Negotiable Instrument	(i) Art. 11 and Art. 29 distinguished		
Mukhtear —Snt by, for costs—Limitation A 84 N 2 Municipality —Adverso possession against—In respect of draws on sides of public street—What amounts to A 146 A N 5 —Sut against—For refund of money logally collected but wrongfully refused to be refunded—Limitation A 62 N 7 —Sut by (a) In respect of land entrusted to municipality by Government for menagement—Limitation A 149 N 6 Mutation A 149 N 6 Mutation —Of name in revenue register—Suit to compel—Limitation—Starting point A 120 N 33 Native Prince —Suit against—Perrussion of Government—Time taken for obtaining permission—Whether can be excluded in computing period of limitation S 9 N 6 Neglect	(b) Distraint effected by landlord under provisions of	Agra	
Sut by, for costs—Limitation A 84 N 2 Municipality Adverso possession against—In respect of drains on sides of public street—What amounts to A 146A N 5 Sut against—For refund of money legally collected but wrongfully refused to be refunded—Limitation A 62 N 7 Sut by (a) In respect of land entrusted to municipality by Government for management—Limitation A 149 N 6 Mutation A 149 N 6 Mutation A 149 N 6 Mutawalli A 120 N 50 Mutawalli A 120 N 33 Native Prince Sut to compel—Limitation—Starting point A 120 N 33 Native Prince Sut for possession—Limitation A 120 N 33 Native Prince Sut for possession—Limitation Sut for limitation Supplies to the supplies of limitation Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Supplies Su		•••	A, 29 N 4
Municipality Adverso possession against—In respect of drains on sides of public in street—What amounts to			A RAN O
Adverso possession against—In respect of drains on sides of public treate—What amounts to Suit against—For refund of money logally collected but wrongfully refused to be refunded—Limitation		•••	11 01 14 2
Sut against—For retund of money logally collected but wrongfully refused to be retunded—Limitation		of pub-	
refused to be refunded—Limitation	lic street—What amounts to		A 146A N 5
Sut by (a) In respect of land entrusted to municipality by Government for management—Limitation		ngfully	A 62 N 7
(a) In respect of land entrusted to municipality by Government for management—Limitation	——Surt by	•••	11 02 11
(b) Limitation A 149 N 6 Mutation —Of name in revenue register—Suit to compel—Limitation—Starting point A 120 N 50 Mutawalli —Office of—Suit for possession—Limitation A 120 N 33 Native Prince —Suit against—Permission of Government—Time taken for obtaining permission—Whether can be excluded in computing period of limitation Support of limitation Support of limitation Support of limitation A 90 N 6 Neglect Of agent A 90 N 7 A 90 N 1; (a) Suit for, by principal—Limitation—Starting point A 90, A 90 N 1; (b) What amounts to A 90 N 2 (c) When actionable A 90 N 2 Of legal practitioner—Suit for, against legal representative—blaintainability A 90 N 2 —Soil for A 90 N 3 Negligence —See under Delay, occuse of—Sufficient cause—Negligence. —Dismissal of suit on ground that plaintiff was negligence. —Dismissal of suit on ground that plaintiff was negligence.—Dismissal of suit on ground that plaintiff was negligence.—Unismissal of suit on ground that plaintiff was negligence.—Dismissal of suit on ground that plaintiff was negligence.—See under Delay, occuse of—Sufficient cause—Negligence. —Dismissal of suit on ground that plaintiff was negligence.—See under Delay occuse of—Sufficient cause—Negligence.—See (a) In respect of land entrusted to municipality by Gover	nment		
Mutation Of name in revenue register—Suit to compel—Limitation—Starting point A 120 N 50 Mutawalli Office of—Suit for possession—Limitation A 120 N 83 Native Prince Suit against—Permission of Government—Time taken for obtaining permission—Whether can be excluded in computing period of limitation S 9 N 6 Neglect Of agent (a) Suit for, by principal—Limitation—Starting point A 90, A 90 N 1; A 90 N 4 (b) What amounts to A 90 N 2 (c) When actionable A 90 N 2 (c) When actionable A 90 N 2 Of decased agent—Suit for, against legal representative—biaintainability A 90 N 2 Of legal practitioner—When actionable A 90 N 2 Of 13 Against almabridar—Limitation A 90 N 3 N 90 N 2 Of 14 Against almabridar—Limitation A 90 N 3 N 10 Against lambardar—Limitation A 90 N 3 N 10 N 10 Against lambardar—Limitation A 90 N 3 N 10 Against lambardar—Limitation A 90 N 3 N 10 Against lambardar—Limitation A 90 N 3 N 10 Against lambardar—Limitation A 90 N 3 N 10 Against lambardar—Limitation A 90 N 3 N 10 Against lambardar—Limitation A 90 N 3 N 10 Against lambardar—Limitation A 90 N 3 N 10 Against lambardar—Limitation A 90 N 3 N 10 Against lambardar—Limitation A 90 N 3 N 10 Against lambardar—Limitation A 90 N 3 N 10 Against lambardar—Limitation A 90 N 3 N 10 Against lambardar—Limitation A 90 N 3 N 10 Against	for management—Limitation	••	
— Of name in revenue register—Suit to compel—Limitation—Starting point		•••	A 149 N 6
ing point		Stort	
Mutawalii — Office of—Suit for possession—Limitation A 120 N 33 Native Prince ——Suit against—Permission of Government—Time taken for obtaining permission—Whether can be excluded in computing period of limitation S 9 N 6 Neglect —Of agent (a) Suit for, by principal—Limitation—Starting point A 90, A 90 N 1; (b) What amounts to A 90 N 2 (c) When actionable A 90 N 2 (d) When actionable A 90 N 2 (e) When actionable A 90 N 2 Suit for, against legal representative—blain—tainability A 90 N 2 —Suit for A 90 N 3 —Suit for A 90 N 3 Negligence —See under Delay, occuse of—Sufficient cause—Negligence. —Dismissal of suit on ground that plainitiff was negligence. —Dismissal of suit on ground that plainitiff was negligence. —Dismissal of suit on ground that plainitiff was negligence. —Dismissal of suit on ground that plainitiff was negligence. —Dismissal of suit on ground that plainitiff was negligence. —Of pleader or clerk—Party suffering from—Liability in damages: S 5 N 11 Negotiable Instrument			A 120 N 50
Office of — Sut for possession — Limitation			
Suit against—Permission of Government—Time taken for obtaining permission—Whether can be excluded in computing period of limitation			A 120 N 33
ing permission—Whether can be excluded in computing period of limitation	=		
Immitation	- Suit against-Permission of Government-Time taken for	obtain.	
Neglect		eriod of	
Cf agent		••	S9N6
(a) Suit for, by principal—Limitation—Starting point A 90, A 90 N 1 (b) What amounts to A 90 N 2 (c) When actionable A 90 N 2 (c) When actionable A 90 N 2 (c) When actionable A 90 N 2 (c) When actionable A 90 N 2 (c) When actionable A 90 N 2 (c) When actionable A 90 N 3 (c) Against director of company—Limitation A 90 N 3 (c) Against director of company—Limitation A 90 N 3 (c) Against lambardar—Limitation A 90 N 3 (c) Against lambardar—Limitation A 90 N 3 Negligence See under Delay, occuse of Sufficient cause—Negligence See under Delay, occuse of Sufficient cause—Negligence See under Delay accuse of Sufficient cause—Negligence See under Dela			
(b) What amounts to A 90 N 2 (c) When actionable A 90 N 2 A 90 N 2 A 90 N 2 A 90 N 2 A 90 N 2 A 90 N 2 A 90 N 2 A 90 N 2 A 90 N 3 A 90 N 5 A 90 N 5 A 90 N 5 A 90 N 5 A 90 N 6 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3 A 90 N 3	(a) Suit for, by principal—Limitation—Starting point	A S	00. A 90 N 1:
(c) When actionable Od deceased agent—Suit for, against legal representative—blain—tainability Ol legal practitioner—When actionable A 90 N 2 Suit for (a) Against director of company—Limitation A 90 N 3 Negligence See under Delay, excuse of—Sufficient cause—Negligence. Dismissal of suit on ground that plaintiff was negligent—Whether entitles him to benefit of S. 14 N 22 Of pleader or clerk—Party suffering from—Liability in damages: S 5 N 11 Negotiable Instrument			A 90 N 4
tamability	(b) What amounts to	•	
tamability	(c) When actionable	Main	A 90 N 2
— Of legal practitioner—When actionable A 90 N 2 — Sult for (a) Against director of company—Limitation A 90 N 3 (b) Against lambardar—Limitation A 90 N 3 Negligence — See under Delay, oxcuse of — Sufficient cause—Negligence. — Dismissal of suit on ground that plaintiff was negligent—Whether entitles him to benefit of S. 14 — Of pleader or clerk—Party suffering from—Liability in damages: S 5 N 11 Negotiable Instrument	tainability	m-2.04111	A 90 N 5
	Of legal practitioner-When actionable	••	
(b) Against lambardar—Limitation A 90 N 3 Negligence —See under Delay, occuse of Sufficient cause—Negligence. —Dismissal of surt on ground that plaintiff was negligent.—Whether entitles him to benefit of S. 14 M 22 —Of pleader or clerk—Party suffering from—Liability in damages: S 5 N 11 Negotiable Instrument	Suit for		
Negligence — See under Delay, oxcuse of — Sufficient cause — Negligence. — Dismissal of suit on ground that plaintiff was negligent.—Whether entitles him to benefit of S. 14			
— See under Delay, oxcuse of —Sufficient cause—Negligence. — Dismissal of suit on ground that plaintiff was negligent.—Whether entitles him to benefit of S. 14 M 22 — Of pleader or clerk—Party suffering from—Liability in damages: S 5 N 11 Negotiable Instrument		•••	11 50 11 0
entitles him to benefit of S. 14 S 14 N 22 Of pleader or clerk—Party suffering from—Liability in damages : S 5 N 11 Necotiable Instrument	- See under Delay, excuse of Sufficient cause Negligence.		
—Of pleader or clerk—Party suffering from—Liability in damages: S 5 N 11 Negotiable Instrument		hether	0 14 N 00
Negotiable Instrument	entities him to beneat of S. 14 Cf pleader or clerk. Party suffering from Lieblyty and day	***	
— Shabjog hundi if a negotiable instrument S 2 Cl 2 N 1			501411
	-Shabjog hundi if a negotiable instrument		S 2 Cl 2 N 1

2500		ODMANA	L INDEA				
Negotiable Instru	ments Act		•				
Words "bill of	exchange"	as defined in	•••	***		820	712 N I
Non-feasance							
Compensation							
(a) Against (rustee—Lir	mitation				A	36 N 8
	ility of gene Articles	eral Art. 36	to cases in	alling under	other	5	36 N 1
		Indian Comp	anies Act	S. 244 —	Limi.	Α.	00112
tation	•••	•••	•••	•••			36 N 1
(d) For reco	very of spec	ific property	-Limitat	ion		A	36 N 3
(e) In case (of recurring	canse of act	ion—Limi	tation — Sta	arting	Δ	36 N 4
	et of non-fe	asance indepe	ndent of	contract -	Limi-	- A	30 11 2
tation		···	auena or	•••	A	36; A	36 N 1
		feasance not	independ	ent of contr	act—	٠.	
Illustra	tive cases			,		A	36 N 2
	ct of wrongs ithin Art. 3	s independent	of contr		31176	A	36 N 7
(i) Limitati	on—Startio	e point	•••	•••	•••		36 N 4
(j) Whether	modified	in cases gov		Limitation	Act,		
8. 24	•••	•••	•••	•••	•••	A	36 N 4 36 N 1
——Meaning of Notice	•••	•••	•••	•••	•••	А	30 11 1
Giving ofW	hat to					A 1	58 N 4
Of motion_W	hether anni	lication for lie	nitation p	proces	•••	Āī	83 N S
Nuisance							
Causing of nn	isance by th	browing latri	ne water	through a he	de in		o at 10
the wall_W	hether a cor	ntinuing wron	ıg	•••	•••	5 2	3 N 18
Annual payme	mto attack a	Ato Dight t	a 3375.a	than hamad r	-hora		
right to office	is lost		· · · · · · · · · · · · · · · · · · ·	oner barred v		A 1	31 N 2
Hereditary off	ice						
		Emoluments (of—Does		Suit	A 190	N 40
(b) Holder (imitation	ne to plainti	er s	it for money	*** PR pr		
		mitation				A 120	N 39
• • • • •	• • •	•					
				9881	y for	A 12	24 N 6
						A 12	4 N 2
		mee-nower,	wnerner r	виз пів висс		A 104	N 15
	lso - 35-1-1				a itu		
ים ליינו	roperties —	tani <i>for posse</i> Limitation	39102 01 1	JOVASWOID BIL	G 113	A 12	4 N 2
(v) D ₀	ectee agains	t shehait	Dacree ba	der in execu	tion		
P	urchasing sl	bare of profit	s nf shebs	it — Inabilit	y of		
a a	ecree-noider behaitSnii	being non- t by reversion	Brahmin	to hold blic	for		
ď	eclaration o	i his right to	receive 8	hare of profit	s of		4 N 5
. 8	hehait—Lin	itation		•••	• • •	A 12	74 TA D
(v) Τ	ecree that p	erson in poss ther interrupt	ession ni i	of time in fa	VOUL		
	f such person	n	• · · ·	Or time in in	•••	A 12	4 N 6
	-						

S 17. S 17 N 2

Office-Hereditary office-Possession of, suit for-(Contd.) (vii) Defendant obtaining letters of administration as heir to office - Whether can plead limitation against real beir A 124 N 10 (viii) Defendant, whether entitled to tack on possession of independent trespasser to that of his own in ostablishing plea of prescription A 124 N 7 (1x) Defendant, whether ontitled to tack on the adverse possession of predecessor to that of bis own in establishing plea of prescription A 124 N 7 (x) For declaration of plaintiff's right to office and for pos-A 124 N 5 session -- Limitation (xi) For declaration of plaintiff's title to office and for reco. very of emoluments thereof-Lumitation A 124 N 5 (xii) For declaration that plaintiff is entitled to office-Limitation A 124 N 5 (xiii) For directing defendants to produce their accounts of office-Limitation A 124 N 5 (xiv) Limitation-Starting point A 120 N 33; A 124; A 124 N 2; A 124 N 13 (xv) Office and property attached thereto - Suit based on title by adoption—Limitation A 124 N 12 (xvi) Office of trustee-Limitation A 124 N 2 ... (xvii) Office or property attached to office - Limitation Act, S. 10, whether applies ... A 124 N 11 (xviii) Office-holder, whether entitled to possession of property, where only right to share of revenues of property and not right to its possession, is attached to office A 124 N 11 (xix) Permissive possession of office of defendant-Whether adverse possession essential for applicability of Art. 124 A 124 N 6 (xx) Profits, where right to receive profits is attached to hereditary office- Suit, whether barred if right to office is barred A 124 N 11 (xxi) Property attached to office-Suit, whether harred if right to possession of office is barred . A 124 N 11 (xxii) Restraining defendant from obstructing plaintiff in the enjoyment of his office-Limitation ... A.124 N 5 (xxiii) Right to office extinguished by virtue of S. 28, Limitation Act, whether revived subsequently by re-entry into possession A 124 N 14 (xxiv) Right to office, whether becomes extinguished under S 28, Limitation Act, where suit for possession of offico is barred A 124 N 14 (xxv) Time, whether will run where there is no person competent to sue ... A 124 N 13 (d) Right to sue for, accruing during insanity - Recovery from insacity within six years of accrual of right to sus-Extension of time, if available S 8 Illus 2 (e) Suit for possession of -Starting point of limitation - Whether postponed when cause of action accrues to estate of deceased

person ...

2000			0234421	THE THEFT			
Office	-Heredit	ary Office—	(Contd.)				
•	(f) What						A 124 N 4
		Entirely nev		atad tan 6		hothor	24 121 11 1
	(1)	hereditary					A 124 N 9
	(2.)					•••	A 124 N 4
		Jaharki Vati					A 124 N 4
	(111)	Membership	or newastus	nam Comm	ittee appoir	ted by	
		Governmen			wments Act		1 101 17 1
		ther herodit			•••	• • •	A 124 N 4
		Office of karn				•••	A 124 N 4
		Office of Male				•••	A 124 N 4
		Office of mon				•••	A 124 N 4
	(vii)	Office of mut	awalli of w	kf, whetho	r hereditary	•••	A 124 N 4
	(viii) (Offico of Par	darasannid	his, whethe	r hereditary	• • • •	A 124 N 4
	(ix)	Office of Sam	udayi of H	indu temple	e ie Malabat	, whe-	
		ther heredite			***	•••	A 124 N 4
	(x) (Office of sheb		r horoditar	v		A 124 N 4
		Offico, succes				point.	
	(,	ment, whoth				***	A 124 N 4
	(vii)	Cestator after	annointing	teen norson		direct.	
	(11.17)				hocome here		
		-Such offic			***		A 124 N 4
							S 2 CI 8 N 6
		fficors—Dev		igni io sue	•••	•••	D 2 0. 0 0
		Removal of—					
		dant sought					A 120 N 33
		ous viows-		—Starting p	01nt	•••	A 120 N 33
		tion—Starti	og point	•••	•••	***	A 120 M 60
	Ion beredit						
		sion of—Suit					1 100 NT 99
	(1)	Limitation—	Starting po	ınt	•••	. :::	A 120 N 33
	(ii)	Limitation a	pplicable to	suit for po	essession of		A 124 N 2
		tary office	•••		***	***	A 121 N 2
		Office and las				***	A 120 N 33
	(iv)	Right of own					
		suit is not h			ed time	***	A-120 N 83
		or office of M	utawalli—I	amitation	***	•••	A 120 N 33
I	Possession c						
	(a) What						
	(1)	Performance	of duties	of office w	rithout rece	ipts of	A 124 N 8
		profits there	from, whet	her possessi	ion of office		Y 134 W 9
	(n)	Receipts of	profits with	oot perform	nance of du	ties of	. 101 N G
		office, wheth			***	•••	A 124 N 8
	(b) When	possessed	• • • • • • • • • • • • • • • • • • • •		•••		A 124 N 8
I	Religious of	fice—Cause	of action a	ceruing to	holder of re	ligious	
	office as su	ch—Succeed	ing holder,	if entitled	to fresh per	riod of	G 0 N 10
	limitation			•••	•••	•••	S 9 N 10
1	What is	•••	•••	•••		•••	A 124 N 3
Office							
		3775					A 14 N 5
		ent—Who is	, within Ar	P. T.E	• •	•••	
Order							A 151 N 3
	Date of, wh		•••	•••	•••	- ***	A IOI NO
]	Declaring p	laintiff's righ	t to payme	nt of mon	ey from defe	ndant	
	-Enforce	ment ofSui	t upon—W	hero no pro	ovision is ma	de for	A 122 N 1
• -	execution of	of order Ma	intainabilit	_Limitati	on	•••	7 122 N I

0-2 (0	
Order—(Contd.)	
 Directing here to produce certificate of heirship before payment of money claimed could be made—Subsequent suit by heir for 	
recovery of money—Limitatinn	A 14 N 2
-Ex parte order	A 14 N 2
(a) In execution—Setting aside—Application for—Limitation	A 164 N 2
(b) Of adjudication of insolvent-Setting aside-Application for	11 101 11 2
-Limitation	A 164 N 2
(c) Under Civil P. C. O 21, R. 50, sub-r. 2-Setting aside	
- Application for-Limitation	A 164 N 2
(d) Under Civil P. C., S. 152-Setting aside-Application for-	
Limitation	A 164 N 2
(e) Under Companies Act, S. 150—Setting aside—Application	
for-Limitation	A 164 N 2
Art. 151	A 151 N 3
Granting certificate of beirship on strength of alleged will	V IOI W 9
ther must be set aside by person suing recipient of certificate for	
recovery of property of deceased on ground that he was intestate	
heir	A 13 N 1
-In proceeding other than suit-What is	A 13 N 2
(a) Order on application by Official Receiver to release properties	
attached before judgment in suit, whether order in proceed.	
ing other than suit	A 18 N 2
(b) Order in dispute unitiated by application, whether order in	
proceeding other than aust	A 18 N 2
(c) Order in execution proceeding in a suit, whether order in proceeding other than suit	A 18 N 2
(d) Order on application under Civil P C., O. 21 R 89, whether	W TO M Z
order in proceeding other than suit	A 13 N 2
-Necessary to be set aside-Plaintiff framing suit in different man-	
ner-Whether can evade limitation applicable to suit for setting	
aside act or order	A 14 N 2
Not binding on plaintiff—Illustratative cases	A 14 N 2
-Not necessary to be set aside-Prayer by plaintiff for setting aside	
order—Effect of	A 14 N 2
Of Civil Court	

	A 13 N 4
aside order—Limitation without setting	A 19 N 1
(111) Test to find out whether suit is one for setting aside	A 13 N 1
order	A 13 N 1
(b) When needs bo set aside	A 13 N 1
Of Civil Court in proceeding other than suit-Setting aside-Suit	
for-Limitation	A 13
-Of Collector dismissing application by mortgagor for redeeming	
mortgage under Punjab Redemption of Mortgages Act-Subse.	
quent suit under S. 12 of same Act for redeeming mortgage-	
Limitation	A 14 N 2
—Of Government officer (a) Illustrative cases where it is not necessary for plaintiff to set	
aside order painting to set	A 14 N 2
and office	-1 12 M Z

2958 GENERAL INDEX	
Office —Hereditary Office—(Contd.)	
	124 N 4
(i) Entirely new office created for first time, whether	127 11 1
	124 N 9
	124 N 4
(iii) Membership of Devasthanam Committee appointed by	
Government under Religious Endowments Act, whe-	
	124 N 4
	24 N 4
	24 N 4
(vi) Office of monigar, whether hereditary A I	24 N 4
(vii) Office of mutawalli of wakf, whether hereditary A I	24 N 4
	24 N 4
(ix) Office of Samndayi of Hindu temple in Malabar, whe-	
ther bereditary A I	24 N 4
(x) Office of shebait, whether hereditary A 1	24 N 4
(xi) Office, succession to which is by nomination or appoint.	
	24 N 4
(xii) Testato: after appointing two persons as trustees direct-	
ing that after them office should become hereditary	
	24 N 4
	18 N 6
Holder ofRemoval ofSuit for	
(a) Defendant sought to be removed no ground of change of	
	0 N 88
	0 N 33
Non-heroditary office	
(a) Possession of — Sunt for	0 N 33
	3 14 00
(ii) Limitation applicable to sait for possession of heredi-	24 N 2
tary office A 1 (11) Office and lands attached to it—Limitation A 12	0 N 33
(iv) Right of nwner, whether barred by S. 28, Lim. Act, if	
suit is not brought within prescribed time A.12	0 N 33
(b) Suit for office of Mutawalli—Limitation A 120	0 N 33
Possession of	
(a) What is	
(1) Performance of dates of office without receipts of	
	24 N 8
(ii) Receipts of profits without performance of duties of	0.4 NT O
onice, whether possession of onice	24 N 8 24 N 8
	21140
-Religious office-Gause of action accruing to holder of religious	
office as such—Succeeding holder, if entitled to fresh period of	9 N 10
maitation	24 N 3
- What is	
Officer	14 N 5
Of Government-Who is, within Art. 14 A	17 11 0
Order	1 N 3
Date of, what is	I IN D
- Declaring plaintiff's right to payment of money from defendant	
-Enforcement of Suit upon-Where no provision is made for	2 N 1
execution of order—Maintaioability—Limitation A 12	, _

Order—(Contd.)	
- Directing herr to produce certificate of heirship before payment of	
money claimed could be made-Subsequent suit by heir for	
recovery of money-Limitation	A 14 N 2
Ex parte order	1 101 27 0
(a) In execution—Setting aside—Application for—Limitation (b) Of adjudication of insolvent—Setting aside—Application for	A 164 N 2
-Limitation (c) Under Civil P C, O. 21, R. 50, sub-r 2-Setting aside	A 164 N 2
—Application for—Limitation (d) Under Civil P C., S. 152—Setting aside—Application for—	A 164 N 2
Limitation	A 164 N 2
(e) Under Companies Act, S. 150—Setting aside—Application for—Limitation	A 164 N 2
	A 104 N 2
Art, 151	A 151 N 3
—Granting certificate of heirship on strength of alleged will—Whether must be set aside by pervon suing recipient of certificate for recovery of property of deceased on ground that he was intestate.	
beir	A 18 N 1
In proceeding other than suit—What is	A 13 N 2
(a) Order on application by Official Receiver to release properties	
attached before judgment in suit, whether order in proceed-	1 10 37 0
ing other than suit	A 18 N 2
proceeding other than suit	A 13 N 2
(c) Order in execution proceeding in a suit, whether order in	A 18 N 2
C. O. 21 R 89, whether	
1t	A 18 N 2
- Necessary to be set aside—Plaintiff framing suit in different man-	A 18 N 2
ner-Whether can evade limitation applicable to suit for setting	
ner—Whether can evade limitation applicable to suit for setting sside act or order	A 14 N 2
ner	
ne:—Whether can evade limitation applicable to suit for setting saids act or order. Not binding on plaintiff—Illustratativo cases. Not necessary to be set aside—Prayer by plaintiff for setting aside order—Effect of	A 14 N 2
ner—Whether can evade limitation applicable to suit for setting saide act or order Not hinding on plaintiff—Illustratativo cases Not necessary to be set aside—Prayer by plaintiff for setting aside order—Effect of Of Civil Court	A 14 N 2 A 14 N 2
ne:—Whether can evade limitation applicable to suit for setting aside act or order. Not binding on plaintiff—Illustratativo cases Not necessary to be set aside—Prayer by plaintiff for setting aside order—Effect of Of Civil Court (a) Setting aside—Suit for	A 14 N 2 A 14 N 2 A 14 N 2
ner—Whether can evade limitation applicable to suit for setting sside act or order	A 14 N 2 A 14 N 2
ne:—Whether can evade limitation applicable to suit for setting aside act or order. Not binding on plaintiff—Illustratativo cases Not necessary to be set aside—Prayer by plaintiff for setting aside order—Effect of Of Civil Court (a) Setting aside—Suit for	A 14 N 2 A 14 N 2 A 14 N 2 A 13 N 4
ner—Whether can evade limitation applicable to suit for setting sside act or order	A 14 N 2 A 14 N 2 A 14 N 2 A 13 N 4 A 13 N 2
ner—Whether can evade himitation applicable to suit for setting sside act or order Not binding on plaintiff—Illustratativo cases Not necessary to be set aside—Prayer by plaintiff for setting aside order—Effect of Of Civil Court (a) Setting aside—Suit for (i) Limitation—Starting point (i) Suit for relief which plaintiff can seek without setting aside order—Limitation (in) Test to find out whether suit is one for setting aside order order	A 14 N 2 A 14 N 2 A 14 N 2 A 13 N 4 A 13 N 1
ner—Whether can evade limitation applicable to suit for setting aside act or order Not binding on plaintiff—Illustratativo cases Not necessary to be set aside—Prayer by plaintiff for setting aside order—Effect of Of Civil Court (a) Setting aside—Suit for (i) Limitation—Starting point (ii) Suit for relief which plaintiff can seek without setting aside order—Limitation (in) Test to find out whether suit is one for setting aside order (b) When needs be set aside	A 14 N 2 A 14 N 2 A 14 N 2 A 13 N 4 A 13 N 2
ner—Whether can evade himitation applicable to suit for setting sside act or order Not binding on plaintiff—Illustratativo cases Not necessary to be set aside—Prayer by plaintiff for setting aside order—Effect of Of Civil Court (a) Setting aside—Suit for (i) Limitation—Starting point (ii) Suit for relief which plaintiff can seek without setting aside order—Inmitation (iii) Test to find out whether suit is one for setting aside order order (b) When needs be set aside Of Civil Court in proceeding other than smit—Setting aside—Suit	A 14 N 2 A 14 N 2 A 14 N 2 A 13 N 4 A 23 N 2 A 13 N 1 A 13 N 1
ner—Whether can evade limitation applicable to suit for setting sside act or order Not hinding on plaintiff—Illustratative cases Not necessary to be set aside—Prayer by plaintiff for setting aside order—Effect of Of Civil Court (a) Setting aside—Suit for (i) Limitation—Starting point (i) Suit for relief which plaintiff can seek without setting aside order—Immitation (in) Test to find out whether suit is one for setting aside order (b) When needs be set aside Of Civil Court in proceeding other than smt—Setting aside—Suit for—Limitation	A 14 N 2 A 14 N 2 A 14 N 2 A 14 N 2 A 13 N 4 A 13 N 1
ner—Whether can evade limitation applicable to suit for setting sside act or order Not binding on plaintiff—Illustratativo cases Not necessary to be set aside—Prayer by plaintiff for setting aside order—Effect of Of Civil Court (a) Setting aside—Suit for (i) Limitation—Starting point (ii) Suit for realief which plaintiff can seek without setting aside order—Limitation (iii) Test to find out whether suit is one for setting aside order (b) When needs be set aside Of Civil Court in proceeding other than smit—Setting aside—Suit for—Limitation Of Collector dismissing application by mortgagor for redeeming	A 14 N 2 A 14 N 2 A 14 N 2 A 13 N 4 A 23 N 2 A 13 N 1 A 13 N 1
ner—Whether can evade limitation applicable to suit for setting sside act or order Not binding on plaintiff—Illustratative cases Not necessary to be set aside—Prayer by plaintiff for setting aside order—Effect of Of Civil Court (a) Setting aside—Suit for (i) Limitation—Starting point (ii) Suit for relief which plaintiff can seek without setting aside order—Immitation (iii) Test to find out whether suit is one for setting aside order (b) When needs be set aside Of Civil Court in proceeding other than smit—Setting aside—Suit for—Limitation Of Collector dismissing application by mortgagor for redocming mortgage under Punjab Redemption of Mortgages Abbse.	A 14 N 2 A 14 N 2 A 14 N 2 A 13 N 4 A 23 N 2 A 13 N 1 A 13 N 1
ner.—Whether can evade limitation applicable to suit for setting aside act or order Not binding on plaintiff—Illustratativo cases Not necessary to be set aside—Prayer by plaintiff for setting aside order—Effect of Of Civil Court (a) Setting aside—Suit for (i) Limitation—Starting point (ii) Suit for relief which plaintiff can seek without setting aside order—Limitation (iii) Test to find out whether suit is one for setting aside order (b) When needs be set aside Of Civil Court in proceeding other than smit—Setting aside—Suit for—Limitation Of Collector dismissing application by mortgagor for redeeming mortgage under Punjab Redemption of Mortgages Act—Subsequent suit under S. 12 of same Act for redeeming mortgage.	A 14 N 2 A 14 N 2 A 14 N 2 A 13 N 4 A 29 N 2 A 18 N 1 A 18 N 1
ner—Whether can evade limitation applicable to suit for setting sside act or order Not binding on plaintiff—Illustratativo cases Not necessary to be set aside—Prayer by plaintiff for setting aside order—Effect of Of Civil Court (a) Setting aside—Suit for (i) Limitation—Starting point (ii) Suit for relief which plaintiff can seek without setting aside order—Limitation (in) Test to find out whether suit is one for setting aside order (b) When needs be set aside Of Civil Court in proceeding other than smit—Setting aside—Suit for—Limitation Of Collector dismissing application by mortgagor for redocming mortgage under Punjab Redemption of Mortgages Act—Subsequent suit under S. 12 of same Act for redeeming mortgage—Limitation Of Government officer	A 14 N 2 A 14 N 2 A 14 N 2 A 13 N 4 A 23 N 2 A 13 N 1 A 13 N 1
ner—Whether can evade himitation applicable to suit for setting sside act or order Not binding on plaintiff—Illustratativo cases Not necessary to be set aside—Prayer by plaintiff for setting aside order—Effect of Of Civil Court (a) Setting aside—Suit for (i) Limitation—Starting point (ii) Suit for relief which plaintiff can seek without setting aside order—Initiation (iii) Test to find out whether suit is one for setting aside order (b) the needs be set aside (o'Cloude needs be set aside Of Civil Court in proceeding other than smit—Setting aside—Suit for—Limitation Of Collector dismissing application by mortgagor for redeceming mortgage under Punjab Redemption of Mortgages Act—Subsequent suit under S. 12 of same Act for redeeming mortgage—Limitation Of Government officer (a) Illustrative cases where it is not necessary for plaintiff to set	A 14 N 2 A 14 N 2 A 14 N 2 A 13 N 4 A 29 N 2 A 18 N 1 A 18 N 1
ner—Whether can evade limitation applicable to suit for setting sside act or order Not binding on plaintiff—Illustratativo cases Not necessary to be set aside—Prayer by plaintiff for setting aside order—Effect of Of Civil Court (a) Setting aside—Suit for (i) Limitation—Starting point (ii) Suit for relief which plaintiff can seek without setting aside order—Limitation (in) Test to find out whether suit is one for setting aside order (b) When needs be set aside Of Civil Court in proceeding other than smit—Setting aside—Suit for—Limitation Of Collector dismissing application by mortgagor for redocming mortgage under Punjab Redemption of Mortgages Act—Subsequent suit under S. 12 of same Act for redeeming mortgage—Limitation Of Government officer	A 14 N 2 A 14 N 2 A 14 N 2 A 13 N 4 A 29 N 2 A 18 N 1 A 18 N 1
ner—Whether can evade limitation applicable to suit for setting sside act or order Not binding on plaintiff—Illustratativo cases Not necessary to be set aside—Prayer by plaintiff for setting aside order—Effect of Of Civil Court (a) Setting aside—Suit for (i) Limitation—Starting point (ii) Suit for relief which plaintiff can seek without setting aside order—Limitation (iii) Test to find out whether suit is one for setting aside order—Limitation (iv) Test to find out whether suit is one for setting aside order—Limitation Of Collector dismissing application by mortgager for redocuming mortgage under Punjab Redemption of Mortgages Act—Subsequent aut under S. 12 of same Act for redocuming mortgage—Limitation Of Government officer (a) Illustrative cases where it is not becessary for plaintiff to set	A 14 N 2 A 14 N 2 A 14 N 2 A 13 N 4 A 13 N 1 A 13 N 1 A 13 N 1

2960	Genera	L INDEX				
Ondon Of Go	vernment Officer-(Contd.)					
	ting aside—Suit for					
	i) Illustrative cases of orders	not governed	he Art 14		A 14	N S
	i) In respect of merely en				11	11 0
,	applicable				A 14	N 4
(ii	ii) Limitation—Starting point		•••	•••	A 14	
(i	v) Order, whether must be bin	ding on plain	tiff for appli	ca -		
_	bility of Art. 14		•••	•••	A 14	
	v) Residuary provision of limi		***	•••		A 14
- (1	ri) "Setting aside," whother			pon		
,	plaintiff until and unless			•••	A 14	NΖ
(7	ii) Time occupied in proceedi	nga beiore r			A 14	NI 6
(a) Wh	ties, whether excluded on is nullity	•••	•••	•••	A 14	
	en need not be set aside			•••	A 14	
	ency Court leaving open quest					
Suit for	declaration of title to propert	ies—Limitat	ion		A 13	N 1
Oi Pri-	A					
(a) i	. ,		٠.			
		•				
	mitation		•••	***	A 183	
(b) Art	. 183, whether refers to Civil	P. C., S. 48	···		A 183	N 3
	restitution as a result of ord	er of Privy (Jouncil—Li	mi.	A 183	NT A
	tion nitation—Starting point		 183; A 183			
	ler of Privy Council—What is	within Art	183	14 2 ,	A 183	N 7
	rivor of order—What constitu				183 N	
	6, 7 and 8, Lim. Act, whether		183		A 183	N 9
	ere applicant is legally incapa		•••	•••	A 183 I	И 9
-Of revent	ie officer					
	allowing petition for registering					
	Subsequent suit by potitioner	for declarati	on of his rig	bts	A 14	NT O
(1) To	Limitation ecting application for partition				A 14	N 2
	it for declaration of plaintiff's i Shamilat—Limitation	tight to brob	OLUIOTIAGO BT	214	A 14 I	12
	confirmation of Conrt sale-	-Application	for—Limi	fa-		
- tion		···		4	A 181 I	12
Passed a	gainst person in private caps	city - Wi	hether bindi	ng		
	n representative capacity		•••	•••	A 47 1	4 3
	ainst person in representative	e capacity—'	Whether bin	d-	A 47 N	T 9
	ll persons so represented		Ti-femanon	nt	W At L	
	y High Court in its insolvency for—Maintainability—Limite		-Entorognie	A	122 N	V 1
Passed in	favour of a person—Whether	r can be seid	to be bindi	n₫		
on him	involution a posson— income				A 47 1	
Passed w	ithout jurisdiction-Whother	binding on a	nyone	•••	A 47 P	13
	ound by, claiming under—Po	erson when	can be said	to		
	ader one bound by order	•••	•••		A 47 I	
	of—What constitutes	•••	•••	A	. 183 N	10
Setting a		-				
(a) Su	(1) Order under S. 310-A,	Ciril D C	1882 setti	na		
	aside sale in execution—I	imitation	1002, 8000	4	A 120N	2
			•••			

GENERAL INDEX	2961
Order-Setting aside-Suit for-(Contd.)	
(ii) To declare appointment of person as member committee under Act 20 of 1863 by order Magistrate invalid and for injunction rest from performing duties of committee	of District raining him member —
Whether really one for setting aside order	A 13 N 1
(iii) Where relief asked for is on the strength of formity with order—Limitation applicab	le, wbether
same as applicable to suit for setting aside a	et or order A 14 N 2
(b) Where necessary — Order null and void as many purisdiction, whether must be set uside	de without A 14 N 2
	4 44 57 6
(c) Where not necessary—Illustrative cases —Ultra vires orders—Examples of	4 4 4 4 4 4 4
	1 45 22 0
•	A 47 N 5
Ordinance 2 of 1932	7.00.11.0
Whether special law within the meaning of S. 29	S 29 N 6
Oudh Civil Digest	
——Paragraph 389—Application for copy accompanied by deposit—Deficiency made up after requisition by c	flice—Time
requisite for obtaining copy to be calculated only fr which deficiency was made up	~
	S 12 N 14
Oudh Rent Act ——Section 108—Application under—Delay in filing—Exc	ase of S5N4
Ouster ——Co.owner—See Adverse possession—Co.owners.	
Paper Currency Act	
— Section 26—Promissory note executed in lieu of prior as contravening S. 26— Suit on original cause of a missory note, if can be used as acknowledgment of ha	ction—Pro.
Parsl Marriage and Divorce Act	
-Parsi woman suing for divorco-Age of majority, when	attained : S'6 N 21
Parties-See also Party.	
-Addition of parties after limitation-Effect-Bar of su	
parties added—Illustrations	8 22 N 5
-Person, if becomes party only on service of summons o	
Substitution or addition of new party after institution Suit, when will be deemed to be instituted as regards a	n of suit_
Partition	and fairty. D 22, 71 19 M 2
	xecution A 182 N 17
Of eash-Suit for-Limitation	A 120 N 12
Of family business-Suit for-Limitation	A 120 N 38
-Partition and possession of moveable property - Limits	tion A 120 N an
- Partition suit-Final decree in application for-Limite	tion A 181 N 16
	12131 14
	Lim.

Partition—(Contd.)	;
-Right to sue for joint possession extinguished by operation of S. 28	
Right to claim partition and recovery of share also lost Suit for Plaintiff claiming sum in addition to proper share on	S 28 N 6
account of matters in respect of which suit would have been	
	N 14 F N 13
- Suit in respect of By minor, to question partition, where minor	
had been represented by mother—Limitation—Starting point	A 120 N 38
- Suit to set aside-Discharge-Manager of joint Hindu family-	~
Capacity of, to give discharge	S 7 N 16
Partner	
 Co-partner—Payment of common liability by one co-partner in excess of share—Whether payment for other co-partners within 	,
Art. 61	A 61 N 6
-Sub-partner-Sub-partner liable to partner nnly in main partnership	
-Suit against, by partner in main partnership, for contribution of	
share of losses sustained by partner in main partnership-Limi-	A 61 N 10
tation	A 01 N 10
—Suit by (a) Against co-partners for contribution for amount paid under	
decree for debt contracted in bis name for partnership	
business under agreement of partners— Whether one for	
contribution for payment by plaintiff of whole or more than his share of amount due under joint decree	A 99 N 2
(b) Against manager of firm, for moveable property received	11 00 11 7
by manager—Lamitation	A 89 N 3
(c) Against sub-partner, for loss sustained by partner in main)
partnership—Limitation	A 120 N 27
(d) For accounts without prayer for dissolution of partnership—	A 120 N 27
Limitation	A 89 N 7
Partnership—See also under Partner.	
-Accounts	
(a) Suit for-Accounts of other partnerships, if can be gone into	
	N 14 F N 18
(b) Suit on adjusted accounts which entitles plaintiff to sue by yirtue of adjustment—Limitation	A 115 N S
-Death of one partner—Canse of action accruing in favour of his	
representatives to sue other partners for account _S. 17, if	C 17 N A
applies	S 17 N 4
Debt due to firm—Partner's capacity to give discharge in respect	S7N9
Debt due to stranger from firm_Letter by son of one partner	
adverting to debt and promising to pay it. On father's death.	
son becoming one of the persons liable to pay debt—Suit for	
debt—Son's statement when he had no interest in firm can be used against him as acknowledgment in liability	S 19 N 33
—Dissolution	
(a) Arrangement that share of one in commission carned should	
be recovered by the nther and held for him-Trust for	S 10 N 13
specific purposo, if created	5 10 IV 40

Partnership—Dissolution—(Contd.) (b) Suit for (1) Claim in time when made, not adjudicated within three years-Claim, if rendered bad against partner. S3N14FN13 ship assets (11) Limitation A 120 N27 ••• (iii) Whether one for rescussion of contract ... A 114 N 1 -Dissolution and accounts of -Sunt for-Whether sunt for accounts of dissolved partnership A 106 N 4 -Dissolved partnership (a) Question when partnership is dissolved, whether binding in second appeal A 106 N 15 (b) Question whether and when partnership bas been dissolved. bow decided A 106 N 13 (c) Suit for accounts-See under Accounts. (d) Suit for winding up dissolved partnership, whether suit for accounts of dissolved partnership A 106 N 4 Existing partnership (a) Dissolution of Suit for Limitation A 120 N 2 (b) Relief on basis of-Suit for - Suit in substance one for account and share of dissolved partnership.-Whether can be treated as one for account and share of dissolved part. nership ... A 106 N 2 -Firm (a) Prior suit against firm-Subsequent suit against surviving partners of firm and persons in possession of deceased part. ner's assets - Whether both against same parties for purposes of S. 14 S 14 N 16 (b) Whether the same party as the individuals thereof for the purposes of S. 14 S 14 N 16 Meaning of A 106 N 3 (a) Family business carried on by Hindu family, if partnership; A 106 N 3 -Partners under disability at the commencement of limitation -Whether entitled to additional period of limitation S 7 N 13 ---Partners, whether persons jointly entitled to see within S. 7 S 7 N 24 -Partnership suit-Final decree in-Application for-Limitation . A 181 N 16 -Sharo in partnership of ginning factory, whether immovable property within Art 141 A 141 N 11 Suit against—Some partners absent from British India for a cer. tain period-Plaintiff can exclude period of their absence only as against them S 13 N 5 -Suit by one partner against another partner for partnership accounts without impleading third partner—Third partner added after period of limitation-Whole snit, if becomes barred S 22 N 5 -Suit to establish plaintiff's right as partner and for accounts-Limitation-Starting point A 120 N 27 -Whether one partner can give discharge on behalf of all partners. S 7 N 24 -Whether one partner has anthority to pay on behalf of firm S 21 N 13 Partnership Act Section 45-"Acts done" after death of partner-Whether include acknowledgments of liability and part payments or payment of interest S 21 N 13

Party-See also Parties.	
—Addition of—Application by person to get himself added as party to suit under Civil P. C., O. 22 R. (10)—Limitation	A 181 N 20
Necessary party, addition of	
(a) Application for—Limitation	A 181 N 20
(b) Power of Whether can be exercised by Court suo motu	A 181 N 20
(c) Power of Court to add party and duty of Court to dismiss suit against that party on ground of limitation, distinguished:	A 181 N 20
Patni	
—Sale for arrears of rent—Sale set aside by decree—Suit by purchaser against landlord for refund of money paid—Cause of action, if	
affected by fact that decree is appealed against and confirmed in	~ ~ ~ * * * * *
appeal	S 9 N 11
—Sale of patni taluq for arrears of rent (a) Incumbrances in—Avoidance of	
(i) Mere fact of purchaser creating a patni himself, whe- ther sufficient to show that option has been exercised	
where under Provincial Rent and Revenue Acts such incumbrances are voldable at the option of purchaser:	A 121 N 1
(ii) Suit for (a) Burden of proof A 121 N 2	: A 121 N 5
(b) Incumbrances to be avoided, whether must be created subsequent to creation of estate or	
tenure sold, for maintainability of suit (c) Limitation—Starting point: A 121; A 121 N 1	A 121 N 2 l; A 121 N 5
(b) Sale set aside—Suit by auction purchaser for refund of purchase money—Limitation	A 62 N 20
(c) Sale set aside for irregularity—Snit by landlord for the same	
arrears	~ 0 37 11
 (i) Landlord, if entitled to fresh period of limitation (ii) Limitation for auit, if runs from date of aetting aside 	8 9 N 11
of eale	SINS
(d) Surplus sale proceeds paid to one of the owners—Subsequent setting aside of sale and restoration in appeal — Whether affects running of limitation in respect of share of other owners in eale proceeds	S 9 N 11
(e) Under-tenures in—Avoidance of	-
(i) Mere fact of purchaser creating a patni himself, whother sufficient to show that option has been exercised	
where under Provincial Rent and Revenue Acts such	A 121 N 1
under-tenures are voidable at the option of purchaser:	A 121 N 1
(ii) Suit for (a) Burden of proof A 121 N 2;	A 121 N fi
(b) Limitation—Starting point: A 121; A 121 N 1; (c) Under-tenures to be avoided, whether must be	A 121 N 6
greated subsequent to quation of estate Or	
tenure sold, for maintainability of suit	A 121 N 2
——Sale of, set aside for irregularity—Snit by zamindar against patnidar for rent—Cause of action for, when arises	S 9 N 7
Patnidar	
Suit by-For possession of chaukidari chakran lands transferred by Covernment to zamindar-Limitation	A 113 N 3

Pauper	
- Appeal as - See also under Appeal,	
-Appeal as-Subsequent acquisition of property and payment of	
	N 29 F N 1
	S3N12
Application for leave to appeal as panperIf governed by S. 12	S 12 N 4
Leave to appeal as-Application for-Delay in filing, if can be	
excused	S 5 N 3
-Prosecution of application to sue as pauper made mala fide as to	C 14 M 00
pauperism—Whether entitles party to benefit of S. 14	S 14 N 20
——Suit by—Institution of (a) Leave to sue as pauper refused—Suit, when instituted	S 3 N 12
(b) What constitutes	S 3 N 12
.,	50 K 12
Pawnee	
- Legal representative of See under Legal representative.	
—Purchaser of moveable property from—Suit against, for recovery —Limitation—Starting point	A 48-A N 1
	A 40-A N I
——Suit against, for moveable property pawned (a) Allegation of plaintiff as to deposit, whether sole basis for	
ascertaining period of limitation applicable to such suit-	
Limitation	A 145 N 7
(b) Applicability of Art. 49 and Art. 145	A 145 N 4
(e) Limitation—Starting point A 145	5; A 145 N 6
(d) Suit for redemption of pledge—Limitation	A 145 N 7
Payment	
After dissolution of partnership, by partner who has been autho-	
rized to wind up the business—Whether binding on ex partners.	S 21 N 13
Agent duly authorized	
(a) Exercise of authority need not be obligatory	S 20 N 18
(b) Meaning of-Whether includes authority given by law as	C 00 17 10
well as by act of parties	S 20 N 18
——And acknowledgment—Distinction between	S 21 N 6
——Authority to make (a) Authority need not be special one in respect of loan in ques-	
tion	S 20 N 18
(b) Authority specific only to pay towards principal-Agent has	
no authority to pay for interest	S 20 N 18
(c) Authority to pay includes authority to make endorsement	
for payment made	S 20 N 18
includes authority to pay interest also or to make part pay-	
ment .	S 20 N 18
cular payment in question	S 21 N 6
Authorization of a member of any of the groups mentioned in	
S. 21 to pay on behalf of others may be express or implied and	
may be general or special	S 21 N 6
—Burden of proof	
(a) Payment made by person other than debtor—Plaintiff must show that he was agent duly authorized by debtor to make	
payment	S 20 N 35
p.,	11 00

Payment—Burden of proof—(Contd.)	
(b) Plaintiff claiming extension must show that payment was made with intention of paying it for interest or part of	
principal	S 20 N 35
(c) Plaintiff claiming extension must show that payment was of such a nature as would extend limitation under S. 20	S 20 N 35
—By adjustment of scconnt—Sufficiency of, for payment within S. 20	S 20 N 11
-By agent	
(a) "Agent duly authorized in this behalf" in S. 20—Meaning	S 21
(b) Court, if can be regarded as agent of party for purpose of	5 24
S. 2 0	S 20 N 18
(c) In excess of authority	
(1) Mortgagee asked to pay off debt due by mortgager to	
another.—Mortgagoo morely making part payment two years thereafter.—Payment, if in excess of authority:	S 20 N 18
(ii) Mortgagee directed to pay mortgage amount immedi-	D 20 11 40
ately to helder of decree against mortgagor and obtain	
receipt Mortgagee paying the money into Court	
more than a year thoreafter-Payment, if has the	S 20 N 18
effect of extending time (iii) Vendee asked to pay debt due by vender—Vendee	B 20 IV 10
making only part payment—Payment, if has effect of	
extending time	S 20 N 18
(iv) Whether extends time under S. 20	S 20 N 18
(d) Made by quondam agent after death of principal—Whether gives fresh start of limitation	S 20 N 18
(o) Of Hindu widow—Whetbor valid as against reversioner suc-	D 20 10
ceeding to her	S 21
(f) Of mortgagor making payment after a portion of the mort-	
gaged property had been sold by mortgagor-Payment, if	S 21 N 6
saves limitation as against purchaser from mortgagor	5 21 N 0
(g) Order of adjudication annulled under S. 37, Provincial Insolvency Act—Appointee of insolvent's property placed in	
charge of property—Appointee, if agent of insolvent	S 20 N 18
(h) Person making payment must be agent of person liable to	
pay at time of paymont	S 20 N 18
-By cheque	
(a) Cheque received as payment—Date for purpose of giving	S 20 N 11
fresh start is date on which cheque is given (b) Cheque signed by debter given as payment—Sufficiency of.	-
for S. 20	S 20 N 24
(c) When constitutes payment	S 20 N 11
-By Court of Wards-Authority to make payment so as to save	S 21 N 5
limitation is statutory and not as guardian of ward By debtor, if must be an appropriation by debtor	S 20 N 5
-By debtor without specification—Greditor appropriating it towards	
interest—Payment, if amounts to payment of interest as such	
within S. 20	S 20 N 5
-By debter without specification as to whether it is to be appropri-	
ated for interest or for principal.—Right of creditor to appropriate it for interest or for principal at his option	S 20 N 5

Payment_(Contd.)	
-By de facto guardian of minor who is not his legal guardian-	
Whether binding on minor under S. 21	S 21 N 3
—By ex-partner after dissolution of partnership in respect of debt which was a partnership debt—Whether binds other ex-partners.	C 01 37 10
By guardian	S 21 N 13
(a) After ward's death -Whether binding on ward's estate	S 21 N 3
(b) Continuing in management of ward's property after ward	
attains majority—Whether saves limitation	S 21 N 3
(c) Of insane person—Before a person is appointed guardian of an insane person he is not his lawful guardian within S. 21;	S 21 N 4
(d) Of minor—Whether binding on him	S 21 N 3
(e) Order appointing interim guardian requiring that he must	
take permission of Court before making payment - Pay-	
ment made by him without such permission cannot save	S 21 N 3
(f) Payment must be made by lawful guardian for purposes of	52110
S. 21	S 21 N 3
(g) Whether effective irrespective of the question of its being for	~ ~ ~ ~ ~
minor's benefit	S 21 N 3
family	S 21 N 22
-By Hindu widow-Whether binding on reversioners succeeding to	
estate after her	S 21 N 19
By junior member of Hindu joint family Whether binds other members	S 21 N 20
By labour—Sufficiency of, for S. 20	S 20 N 11
-By lawful guardian - Lawful guardian' in S 21 - Meaning of	S 21 N 3
By manager of Hindu joint family	
(a) Family joint when liability was incurred—Family divided at time of payment by alleged manager—Payment, if binding	
on other members of family	S 21 N 20
(b) In respect of liability incurred by members of the family in	
their individual capacity — Manager, if can make payments	C 01 17 00
on behalf of other members of the family (c) Whether saves limitation in regard to liability binding on	S 21 N 20
family	S 21 N 20
(d) Whether should be expressed as made in his capacity as	
manager	S 21 N 20
no notice of partition—Payment, if hinding on other members of	
family	S 21 N 20
-By manager of Hindu joint family in his individual capacity-	
Whether binding on other members of family By manager of Malabar tarwad in respect of habilities binding on	S 21 N 20
tarwad—Whether binds whole tarwad	S 21 N 21
-By member of joint Hindu family carrying on business, made in	
the course of the business — Whether can be presumed to be authorized by other members of the family	S 21 N 14
By member of joint Hindu family in the ordinary course of busi-	S 21 N 14
ness after partition in family-Creditor having no notice of parti-	
tion—Payment, if binding on other members of family	S 21 N 14
By money order—Debtor writing in conpon that amount should be credited to debt—Sufficiency of, for S 20	S 20 N 24
	2 20 1. DI

Payment.—(Contd.)	
By mortgagor Mortgagee sub-mortgaging property to another-	
Payment by mortgagor to snb-mortgagoe — Whether saves limi-	
tation for suit by sub-mortgagee against mortgagor and mort-	
gagee	S 21 N 11
-By one co-mortgagor	
(a) Limitation is not saved as against others as regards personal	
liability and liability in respect of sbare in mortgaged pro-	
perty	S 21 N 11
(b) Limitation is saved as against particular co-mortgagor mak-	
ing payment	S 21 N 11
(c) Such co-mortgagor's share will be liable for the whole	
mortgage debt and not merely for a proportionate part	S 21 N 11
of it	
(d) Whether saves limitation as against other co-mortgagors	S 21 N 11
-By one joint-debtor-Such person compelled to pay more than his	
share of joint debt-Whether can sue other co-debtors for contri-	S 21 N 7
hution	8 21 N
By one member of any of the groups mentioned in S. 21Limita-	
tion will not be saved as against other members not only with regard to their personal liability but also with regard to their liabi.	
lity in respect of property	S 21 N 6
By one of several executors—Whether effective against the others:	S 21 N 15
	5 21 1. 40
—By one of several joint contractors (a) Debt common to all — Payment, if saves limitation against	
the others sayes mintaged against	S 21 N 7
(b) Limitation will be saved as against bim and those claiming	
under him	S 21 N 7
(c) Such joint contractor authorized by another joint contractor	
to make payment	
(i) Authorization need not be express and may be interred	S 21 N 7
from conduct of the joint contractors (ii) Limitation, if saved against latter	S 21 N 7
By one of several potet contractors, partners, executors or mort-	5 24
gagees—Effect of executors or more	S 21
-By one of several joiot judgment-debtors	
(a) Decree passed against them in their capacity as joint con-	
tractors, partners, executors or mortgagees—Payment saves	
limitation only against judgment debtor making payment	S 21 N 17
(h) Whether saves limitation as against all judgment-debtors	S 21 N 17
-By ooe of several persons jointly liable in respect of a mortgage-	S 21 N 6
Whether operates against all of them	5 21 N O
-By one partner authorized by other partners to pay - Whether	S 21 N 13
saves limitation against other partners	5 21 21 20
By one partoer in a going mercantile concern	S 21 N 13
(a) Firm, if bound (b) Presumption of agency of such partner on hehalf of firm will	1) 21 11 10
apply only if payment be made in the course of the partner.	
ship business	S 21 N 13
-By partner in respect of partnership debt after dissolution of firm	
of which creditor has no notice-Whether binds estate of deceas-	G 01 37 19
ed partner	S 21 N 13

Children and an analysis	2000
Payment—(Contd.)	
—By partner of dissolved partnership anthorized to collect and pardebts of partnership—Payment in respect of such debt—Whether	
	. S 21 N 13
By pleader—Whether gives fresh starting point of limitation	0.00 37.04
By principal debtor—Whether saves limitation as against surety	
—By receiver	. 5211112
(e) Powers of receiver limited to collecting outstandings and	1
doing all things necessary for preservation of estate—Recei-	
ver, if hes authority to keep debt airve by acknowledgment	
(b) Receiver authorized to pay interest on debts - Payment, 1	
keeps debt shve	
(c) Whether gives fresh starting point of limitation	
-By surety, whether saves limitation as against principal debtor	
Categories mentioned in S. 21 are exhaustive	. S 21 N 6
Certification of, by decree-holder under O. 21 R. 2, Civil P. C	
Limitation	
—Debt—Meaning of	
- Debt common to all persons hable - Payment by one of them-	
When operates egainst other persons liable to pay it	. 821 N G
- Debt not common to ell but a distinct debt owed by each - Pay-	
ment by one, if and when operates against others Debtor not expressly meking any statement es to whether it is for	
interest or towards principal — Intention of debtor, how ascer-	
tained :	
- Decree-If includes preliminary decree for sale	~ ~~ ** **
- Decree debt	
(a) Certification	
(1) Dete of payment for purpose of S 20 is date of actual	l
payment and not of certification	S 20 N 30
(ii) Limitation for certification	S 20 N 30
(iii) Non-certification before execution potition — Whether	
obstacle to application of S 20 (b) Payment for interest towards preliminary decree — Time for	S 20 N 30
application for final decree, if extended	S 20 N 29
(c) Payment towards decree debt made out of Court—Whether	13 20 11 23
can be recognized	S 20 N 30
Deposit in Court, whether payment	A 99 N 6
- Effect of payment of interest as such or of part payment of princi-	
pal of debt or legacy	S 20
Endorsement of Unregistered endorsement Admissibility of, to	
prove discharge	S 20 N 34
Enforcement of (a) Suit for foreclosure, whether one to enforce payment	A 132 N 3
(b) Suit for possession, whether one to enforce payment	
(c) Suit for redemption, whether one to enforce payment	A 132 N 3
(d) Suit for sale, whether one to enforce payment	A 132 N 2
-For interest - No interest payable under document - Subsequent	
agreement between parties for payment of interest - Payment	
made for interest will extend time	S 20 N 6
— For interest or for principal—Evidence alunde to show that payment was treated at the time of payment to be for interest or for	
principal—Admissibility of	S 20 N 24
Petitospat—ritiniosionity of	0 20 41 24

4010		GENERAL	INDEA			
Payment_(C	Contd.)			1		
	of principal or for in	aterest as si	ich in band	writing of pe	rson	
	pay - Whether	saves limita	taon wbeo	words "wit	bout	
	e" are added		•••		•	S 20 N 9
For princ						
	tor, if should bay	e iotended	to pay the	amount as	part	~ ~ ~ ~ ~ ~
	yment of principal ment by debtor	4	 t		•••	S 20 N 5
	bts—Creditor appr					
	them-Payment, i					
th	at debt				•••	S 20 N 5
	ment must be of p				•-•	S 20 N 5
	ment of part of a					S 20 N 5
Handwrit	at it was in full dis	coarge of a	odt, it saves	umitation	•	5 20 N 5
	oowledgment of p		Jan Auf 16	on Loon 95	. L.	
	ade in the bandwr					
	aking the payment			•••		S 20 N 37
	propriation of pay	ment to p	rincipal nee	d not appea	ır in	
	ndwritiog	. · .		***	•••	S 20 N 24
(c) Che	eque signed by deb ent, if appears in b	tor given a	s payment.		pay-	S 20 N 24
(4) Det	tor sending mon	ev.order to	creditor	and writing	in	D 20 11 ==
00	upon that amount	should be	credited to	debt - Fac		
	yment, il appears i					S 20 N 24
	eree-holder oertify: ent.debtor — Whe					
	ent.gebtor — wne older	ther extend	s time in t	avour of dec	166-	S 20 N 24
	et of payment must	appear in l	bandwriting	of or in wr	ting	
	gned by person mal					S 20 N 24
	t that payment				ould	S 20 N 24
	pear in handwritin terate person maki					5 20 11 22
(11) 11(11)	handwritiog of th	ird narson	Whother s	officient for	DITT.	
no	ose of S. 20			•••		S 20 N 24
	is only for purpose			nt sbould b	e io	S 20 N 24
	andwriting, etc., of			•••	•••	S 20 N 24
	ere endorscment of Whether sufficient					
	on	, to give ite	an atarang	horms of mu		S 20 N 21
(k) On	e person making					
	ithority making en			ther gives f	esh	S 20 N 24
	arting point of limi ly the fact of paym		noar in boo	dereiting of	nor.	5 20 21
	n making payment	ent nesa ap	Dear m nac	CALLENDS OF		S 20 N 24
(m) Pa	rt payment made	and endors	ed by judg	ment-debtor	00	01
_ de	ecree-Whether giv	es fresh sta	rtiog point	of limitation		S 20 N 24
	rt payment of princ		pear in ban	dwriting of	per-	S 20 N 24
	on making paymeot yment and writing		ging it need	not be sir	nul.	
ta	incous	•	•	•••	•••	S 20 N 25
	yment written by		nd signed b			S 20 N 21
P	ayment—Sufficienc	yot	•••	• • •	•••	~ =0 =1 ==

Payment Handwriting (Contd.)

Payment - Handwriting - (Contd.)	
(q) Scribe usually writing the payment and signing it on behalf	
of illiterate person making payment who touches the pen-	
Writing, if can be regarded as being signed by him	
(r) Writing evidencing fact of payment subscribed to by mark	
of illiterate person making payment - Whether writing	
signed by him within the meaning of S. 20	S 20 N 24
- In kind Party alleging such payment must prove there was agree-	
ment between parties that paymont should be in kind	S 20 N 11
Ineffective for purposes of Art. 183 - Fresh period of limitation.	0 20 11 11
	C 00 M 07
if can run from the date of payment under S 20	S 20 N 37
Intention of debtor	
(a) Evidence aliunde, if can be let in to show debtor's intention	
when making payment	S 20 N 6
(b) Fact that interest was due and amount paid was less than	
interestWhether shows intention to pay for interest	S 20 N 6
(c) In paying interest or principal—How ascertained .	8 20 N 6
(d) Mere fact of creditor appropriating amount for interest-	0 21 0
Whether sufficient to show intention of debtor	S 20 N 6
(e) Some acknowledgment or evidence leading to inference that	5 20 21 0
debtor intended that amount should be appropriated in a	
particular manner is necessary	S 20 N 8
Inability affected by payment	5 20 N U
(a) Nature of	S 20 N 31
(b) Part payment of principal due on bond—Whether gives	D 20 H 01
fresh starting point in respect of claim for damages for	
non-payment of principal	S 20 N 31
(c) Payment by mortgagor towards mortgage debt — Mortgago	
(c) Payment by mortgagor towards mortgage debt — Mortgago	
itself and not merely personal liability is kept alive	S 20 N 31
- Liability incurred by or on behalf of Hindu undivided family as	
such - Payment by manager or his agent-Whether can be	0.01
deemed to have been made on behalf of whole family	S 21
- Made to one of several joint mortgagees - Sufficiency of, for pur-	C 01 N C
poses of S 20	S 21 N 6
	12, A 99 N 5
- Mere incurring of pocuniary obligation in shape of hond or promis-	
sory note, whether payment within meaning of Art 99	A 99 N 5
- Method of appropriation determined at the outset by express con-	
tract-Specific appropriation on the occasion of each payment, if	
nccessary	S 20 N 6
Money need not belong to the person paying	S 20 N 12
(a) Payment by any one of such persons—Limitation, if saved	
also as against other joint debtors	S 21 N 6
(b) Payment may be made by any one of such persons	S 21 N 6
Mortgagee in possession	
(a) Assignee of mortgage rights and of equity of redemption in	
possession and receiving rents and profits-Receipt, if can	
be considered to be receipt by mortgagee as such	S 20 N 28
(b) Mere receipt of rents and profits by mortgageo not in posses-	
sion—S. 20 will not apply	S 20 N 28
(c) Mortgage, if should be a nsufructuary one for S 20 sub-	0.05.45.55
section 2 to apply	S 20 N 28

2972 GENERAL INDEX Payment -- Mortgageo in possession -- (Contd.) (d) Mortgage of vatan land with possession - Mortgage deed containing also personal covenant-Death of mortgagor and dispossession of mortgagee under Vatan Act-Suit for money due on mortgage under personal covenant from son of deceased mortgagor-Receipt of produce up to death of mortengor-Whether by mortengee as such S 20 N 28 (e) Person in possession of land under invalid deed of usufructuary mortgage-Receipt of rents and profits by bim, if in the capacity of mortgageo S 20 N 28 S 20 N 28 (f) Receipt of rents and profits must be by mortgagee as such : (g) Receipt of rents or produce by mortgages in possession --S 20 N 28 Whether amounts to payment within S. 20 (h) Receipts of rents or profits amounting to payment-Such invinent, if subject to conditions as to handwriting and S 20 N 28 (1) Simple mortgages obtaining possession from mortgagor in pursuance of invalid agreement of sale-Receipt of rents S 20 N 28 and profits-II in the capacity of mortgagee as such (1) Usufructuary mortgage providing that mortgagee shall pay Government revenue and appropriato balance of rents and profits towards interest - Mortgagee leasing it back to mortgagor and directing him to pay Government revenue and pay balance to him-Revenue paid by mortgager must 5 20 N 23 be treated as rent received by landlord within S. 20 (b) Usufructuary mortgagee receiving rents and profits after passing of decree for sale in his favour-Receipt, if by S 20 N 28 mortgagee as such (1) Usufructuary mortgagee to take usufruct for interest-Receipt of usufruct will be payment only in respect of that S 20 N 28 morteage Must be before expiration of prescribed period-Payment made S 20 N 10 after such period will not save limitation -Nature of business of firm such that payment of interest or part payment is a thing done in the usual course of the business-Authorization to pay to one partner by other partners may be S 21 N 13 presumed -No interest payable under document-Payment by debtor not referring to any interest-Payment must be regarded as part pay-S 20 N 5 ment of principal - Not satisfying requirements of S. 20 but satisfying requirements of S 20 N 37 Art. 183-Date of payment will be starting point under Art. 183: S 20 N 4 --- Ol debt or legacy-S. 20 applies to secured and unsecured debts: -Ol decree, out of Court-Application for notice as to recording of satisfaction A 174 N 8 (a) Bar of limitation-Effect of A 174 N 2 (b) Certification by decree-holder-Limitation (c) Certification by decree-holder under Civil P. C., O. 21 R. 2

(d) Dertification by decree-holder under Civil P. C., O. 21 R. 2 sub-rule 1—Limitation
(d) Demissal of application for default—Fresh application, if municipality

(c) Fraud of decree-holder keeping judgment-debtor from exerevery his right to make such application — Remedies of judgment-debtor

A 174 N 7

Payment-Of decree, out of Court, etc(Contd.)	
(f) Limitation—Starting point A 174, A 174 N 9	2: A 174 N 6
(g) Nature of such application within Art. 174	A 174 N 4
(h) O. 21 R. 2, Civil P. C., whether limited to money-decree	A 174 N 2
(i) Provision for	A 174 N 2
(i) Statement of objection put in by indement debtor in answer	
to application by decree-holder for execution, whether	
amounts to application for recording of payment	A 174 N 4
(k) Surety for judgment-debtor, whether can plead uncertified	
payment made by bim	A 174 N 4
(1) Time, whether can be extended by consent of parties	A 174 N 6
(m) Time, whether can be extended on ground that fraud of	
decree-holder has kept judgment-debtor from exercising	
bis right to apply under Civil P. C., O. 21, R. 2, sub.r. 2	A 174 N 7
(n) Under Insolvency Act—Limitation	A 174 N 2
(o) Under O. 21 R. 2, sub-r. 2, Civil P. C., whether maintain-	
able before decree is formally drawn up	A 174 N 6
(p) Where payment is made not by judgment debtor but by	
stranger-Limitation	A 174 N 2
(q) Who can make such application within Art. 174	A 174 N 4
-Of interest	
(a) Addition of interest to principal—When amounts to payment	~
of interest	S 20 N 11
(b) Debtor making payment without making any specification—	
Creditor appropriating it for interest—Payment, if can be	
treated as payment of interest as such or as part payment	C 00 37 F
of principal (c) Debtor must have intended that payment should be for	S 20 N 5
interest e payment should be for	S 20 N 5
(d) Guardian continuing in management of ward's property	5 20 N D
after ward attained majority—Guardian paying interest on	
subsisting debts—Payment, if saves limitation	S 21 N 3
(e) Interest includes part of interest due	S 20 N 7
(f) Payment must be for interest as such to give fresh period of	5 20 21 1
limitation	S 20 N 5
(g) Question whether payment was of interest as such is one of	
fact to be determined from facts and circumstances	S 20 N 6
Of interest as such	_
(a) Debtor, if must expressly specify at the time of payment that	
it was for interest	S 20 N 6
(b) Determining factor is intention of debtor in making payment	5 20 21 0
and not that of creditor in appropriating it	S 20 N 5
(c) Mere fact that monoy paid is less than interest due-Whe-	D 20 IN 9
ther sufficient in itself to make it payment of interest as	
such	S 20 N 6
(d) Mortgage deed providing that any money paid by mortgagor	5 20 11 6
should be first credited for interest due and balance for	
principal — Payment made without specification when	
interest is due—Payment, if can be treated as one for	
interest as such	S 20 N 6
(e) No interest payable at all nuder document—Payment by	2 20 II U
debtor without specification.—Whether can be regarded as	
one for interest	S 20 N 6
	av 21 0

Payment-Of interest as such-(Contd.)

Payment—Of Interest as such—(Conta.)	
(f) Payment expressed to be made for principal and interest	
generally	
(1) Exact amount of interest need not be specified	S 20 N 8
(11) Whether payment of interest as such	S 20 N 8
(g) Sum paid in discharge of debt more than principal amount	5 20 110
Excess over principal must be deemed to have been paid	
	0.0037.0
for interest as such	S 20 N 6
Of interest as such and payment of principal-Effect of-Distinc-	
tion	S 20 N 5
Of interest as such or of part of principal	,
(a) Fresh period to be computed from date of payment	S 20 N 23
(h) Provisions as to -Principle of English law, if applicable	S 20 N 2
Of interest as such or part of principal accompanied by refusal to	D 20 1
pay balance—Whether gives fresh starting point of limitation for	
	S 20 N 2
recovering debt	5 20 IN 2
Payment of interest as such or part of principal and acknowledg-	
ment of liability-Distinction between Ss. 19 and 20	S 20 N 3
Of interest as such or part of principal giving fresh starting point	
(a) Against whom operates	S 20 N 3
(h) Fresh period.—Computation of	S 20 N 23
(c) Principle underlying provision	S 20 N 2
(d) Proceedings to which provisions apply	S 20 N 4
(e) Provision applies only to suits on debts and legacies	S 20 N 3
	5 20 21 0
(f) Provisions as to—Whether apply to cases falling within	S 20 N 36
Art 75	5 20 K 00
Of interest as such or part of principal in respect of debt-Pay-	
ment implies admission of a right and an acknowledgment of the	~ ~ ~ T C
corresponding liability	S 20 N 2
Of principal-Payment should be of part only of principal to give	
fresh period of lunitation	S 20 N 5
Overpayment-Recovery of-Suit for-Limitation	A 62 N 28
Part payment of principal	
(a) Admission that a larger amount is due at the time of part	
	S 20 N 2
payment is implied	D 20 21 -
(h) Fact that there was a debt and that debt exceeded amount	
paid—Whether can be proved allunde to show part pay-	S 20 N 24
ment of principal	5 20 11 21
-Part payment of principal not fulfilling requirements of S. 20-	S 20 N 3
Whether can operate as acknowledgment of liability	S 20 M 3
-Part payment or payment of interest by nne of the heirs of a	
deceased Muhammadan dobtor—Whether saves limitation against	7 10
other heirs also	S 21 N 10
Person making payment	
(a) Meaning of-Whether means person who physically hands	
over the meney	S 20 N 27
(b) One person sending money by his servant or by post-It is	
net the servant or the postman who makes the payment	
hut person sending it	S 20 N 27
Person making payment having the anthority of the other members	
of the group to which he belongs, in make payment—Payment	
will bind other members also	S 21 N 6
Person who can keep alive right which is not time-barred, by pay-	
	S 21 N 2
ment	

GENERAL INDEX	297a
Payment_(Contd.)	
- Question, what a sum of money was paid for	
(a) Is one of fact	S 20 N 32
(b) Whether can be allowed for the first time in second appeal :	S 20 N 33
-Requirements of, under Art. 183	S 20 N 37
-S. 21, if operates as exception or explanation to S. 20	S 21 N 6
Signature	
(a) Defendant signing his name—Subsequently another person	
without consulting person making payment or authorization	
writing the endorsement over the signature-Such writing	
and signature will not save limitation	S 20 N 26
(b) Must have reference to acknowledgment of payment	S 20 N 26
To be made before expiration of the prescribed period	
(a) Prescribed period—Meaning of	S 20 N 10
(b) Prescribed period does not mean period within which suit or	
application may be filed by reference to S. 4 of Act	S 20 N 10
(c) Prescribed period is not period fixed by contract between	
parties	
(d) Prescribed period is not period fixed by other enactment such	
as S. 48, Civil P. C	
What constitutes	
(a) Addition of interest to principal—When becomes payment	
for interest (b) Continuance in service of servant to whom wages have been	
advanced—Whether amounts to payment of interest	
(c) Creditor levying execution against debtor and recovering	
money—Whether amounts to payment within S 20	
(d) Creditor receiving money for debt due, neither from debtor	•
nor his agent but from a source independent of volition of	
debtor-Whether amounts to payment within S. 20	
(e) Fictitious entry of payment in handwriting of debtor—Whe.	
ther amounts to payment within S 20	
(f) Giving of cheque and its receipt by creditor—Whether con.	
stitutes payment	
(g) Money, if should actually pass, to constitute payment	
(b) Payment, if can be made in kind	
(i) Payment, if should be in cash or currency	
(1) Payment made by sudgment debtor in obedience to order of	
Court—Whether payment within 8, 20	
(k) Payment may be made in any form but there must be some	
thing tantamount to payment (1) Payment must be for admitted debt	
(m) Payment must be of such a nature that it would be ze	
answer in a suit brought by plaintiff to recover the amount	
(n) Pledgee of jewels selling jewels and appropriating amount	
debt-Whether amounts to payment by pledgor	
(o) Promissory note, if may be given by way of payment	
What is	
(a) Giving of security to pay, whether payment	
(b) Involuntary payment, whether payment within Art. CI	
(c) Mere incurring of pecuniary obligation in shape of line	
promissory note, whether payment	

S 20 N 1

S 20 N 1 S 20 N 1 S 20 N 1 S 20 N 1 S 20 N 1

S 20 N 1 S 20 N 1 S 20 N 1 S 20 N 1 S 20 N 13

S 20 N 13 S 20 N 37

S 20 N 14

S 20 N 14

S 20 N 14

S 20 N 14

S 20 N 25

S 20 N 25

...

2976	GENERAL INDEX
Paymen	t_(Contd.)
Who	o must make
(a	a) Agent duly authorized
•	(i) Burmese married couple working land together -
	Hushand having to pay rent of land temporarily
	incapacitated from paying it by his being in pail-
	Wife cultivating land and paying rent - Wife must
	be taken to have authority to act for both and make
	payments
	(n) Elder brother allowed to act on behalf of younger
	hrothers in matters of executing mortgages, etc
	Whether necessarily means elder brother has autho-
	rity to make payment so as to save limitation against
	the others
	(iii) Evidence to show anthority on the part of one to make
t t	payment on behalf of the other—Necessity of
	(iv) Fact that payment of money by one person enures to
	the benefit of others—Whether constitutes authori-
	zation to him to make the payment on their behalf;
	(v) Meaning of
	(vi) No formal or express authorization is required under
	S. 20
	 (vii) One of the persons hable to pay debt making payment Fact that others are present at time of payment,
	whether makes the payment necessarily one by him
	on behalf of others
	(viii) Question whether person making payment is an agent
	duly authorized is one of fact
0	b) Money paid by stranger to contract under which it was paid
•	to person entitled to receive it. Whether amounts to pay-
	ment within S. 20
(6	c) Payment by Hindu eon, of debt incurred by father-Wbe-
•	ther sufficient under S. 20
(6	d) Payment must be made by person liable to pay a debt or by
•	his duly authorized agent
- (e) Payment of rent in respect of part of mortgaged property to
	mortgagee by tenant of mortgagor without having heen
	asked by mortgagor to do so-Whether amounts to payment
	within S 20
- (1	f) Payment under Art. 183 need not be made by person liable
	or his agent
{ ₆	g) Person liable

(1) Person should be liable under the contract of debt (ii) Whether includes purchaser of mortgaged property or

(a) Acknowledgment of payment in written statement filed in suit.-Whether can be called in aid for the purpose of

(b) Acknowledgment of payment signed before suit is com-

puisce mortgagee

menecd-Sufficiency of

-Writing

S. 20

(h) Person liable to pay—Meaning of
(i) Person paying need not be personally liable

Payment-Writing-(Contd.)		
(c) Payment made within time fixed-Whether extends	time	
when acknowledgment made after such period		S 20 N 25
-Will bind oot only persoo by whom or by whose agent it is n	ade	
hut also those claiming under him	•••	S 21 N 6
-Without specification - No other indication as to intentio	n of	
debtor-Creditor not making appropriation for principal or is	nter-	
est-Payment, if to be regarded as part payment of prin	cipal	
which would save time		S 20 N 5
Without specification when several debts doe Creditor, if ent	itled	
to appropriate it for principal of all debts so as to save limit	tion	
for all	•	S 20 N 5
Penal actions		
Meaning of, under English law	•••	A 6 N 1
-Popular or qui tam actions-Meaning of, under English law	•••	A 6 N 1
Penalty		
- Debt, whether penalty		A 6 N 2
- Suit for Upon Statute, Act, Regulation or Bye-law		
(a) Art. 6, whether applies where different period of limit	tioo	
is prescribed by special or local law		A 6 N 5
(b) By Government-Limitation-Art 6 and Art. 149	•••	A 6 N 6
(e) Limitation	. • •	A 6
(d) Suit for damages caused by misconduct of defendant—I	im:	
tation	• • •	A 6 N 3
(e) Suit for debt—Limitation	• • •	A 6 N 2
(f) Suit for penalty to a bood—Limitation (g) Where penalties imposed are recoverable as if they are ar	•••	A 6 N 1
	rears	A 6 N 4
of revenue—Maiotainability Perversion	•••	A O M &
—Of property to other purposes — Suit as to—See under Prop		
-Perversion of, to other purposes.	юссу	
Plaint		
Rejection ofConclusion that suit has been instituted after		0.037.07
based on allegations in plaint—Rejection is proper procedure	•••	S 3 N 35
Plaintiff		
Ghatwal, whether claims through his father as predecessor w		
S. 2 Joint plaintiffs—Death of one plaintiff—Right to sue, who	A 19	12 & 144 N S
1	roer	A 170 M O
	9 (7)	A 176 N 2 B, A 91 N 17
		O, A 51 N 11
		A 109 N 15
		A 176 N 2
Plea	•••	AITONE
70 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7		4 07 37 10
Pleader	•••	A 95 N 16
-Mistake of Sec under Delay, excuse of Sufficient cause Mis	take	
-Mistake of agent	- uno	
-Suit by, for costs-Limitation		A 84 N 2
Pleader and client		
- Admission by pleader in the course of his duties on hehalf of c	lient	
-Whether hinds client as acknowledgment of liability	•••	S 19 N 51

2310	MERCH INDEA			
Pleader and client-(Contd.)				
-Negligence of pleader-Effect of				85N 11
	•••	•••	•••	5011 11
Pleadings				
Acknowledgment of liability ralice		nitation for	suit	S 19 N 77
Fact must be stated in plaint	21 - A 12 A		mlainte	8 4 N 16
- Fact of Court having been closed,	n snound no me	ontioned in	printing:	D 4 IV 10
-Failure to plead exemption unde	r S. 14 Wh	other fatal	to tho	S 14 N 30
Party pleading fraud as ground	at agamutian t	nam limita	Hon	D 14 IV 00
Particulars thereof should be see		rom minica	1011	S 18 N 6
Plaint stating ground on which of		har is clai	med	2
Plaintiff, if can rely at thin b	caring, on a di	fferent gre	und of	
exemption	***		•••	S 19 N 77
Plaintift pleading title - He need	l not say that d	defendant h	as lost	
his title by adverse possession		•••	•••	S 28 N 8
-Plca of adverse possession-See un	der Advorse po	ssession.		
- Suit prima facie barred - Plain	tiff must state	in plaint r	egoego	
why suit is in time	•••		•••	8 20 N 85
Waiver, whother can be gathered	from pleading	•••	•••	A 75 N 17
Pledge				
-Enforcement of Suit for-Limits	ation			A 57 N 4
Of moveable property -Enforcement		_Limitatio	n	A 120 N 41
Redomption of Suit for Limits		411	***	A 145 N 7
Policy		•••		
Insurance policy-Suit on				
(a) Limitation—Starting point.	Whore cum o	secured is n	avahla	
immediately after proof of	death or loss be	a hoon give	n to or	
received by insurers		A 86:	A 86 N 1	; A 86 N 3
(b) Where sum insured is payal				
or donth is proved-Limits	tion	•••	***	A 86 N 2
Possession				
Ahandonment of, by true owner				
(a) Land consisting of scanty	culturable area	recovered	from	
time to time from river—I	lot paying to o	mners to w	ork it	
-Failure to cultivate docs	not raise presu	mption that	, 10BCl	144 N 73
is abandoned (b) Local circumstances and con	Jitaana must ba	looked into	· A 149 A	144 N 73
(c) Property of value not taken	nust be	for long ti	mo	
No explanation for neglect	by true exect-	- Presump	lion is	
that owner abandoned his	rights		A 142 8	t 144 N 73
- Acts alleged whether referable to	right of posse	ssion or rig	ht of	
easement depend upon facts a	nd circumstanc	es of part		144 N 53
ca40	•••	•••	A 143 6	. 144 14 55
(a) In case of rival claimants,		itio is decin	A 149 &	144 N 11
law to be in actual possessi (b) Meaning of	00	•••		A 10 N 7
(c) Neither proof of title nor ad	indication on o	uestion of ti	Alo in	
				144 N 53
(d) Of part is possession of who	in in caso of rigi	tful owner	. A 149 &	144 N 13
(c) Of whole property, by tresp	asser—Illustrati	ions	A 143 A	144 N 13

	-010
Possession-Actual possession-(Contd.)	
(I) Of whole property, by trespasser - What constitute	q
	, 142 & 144 N 12
-Adverse possession-See also Adverso possession.	
(a) Acquisition of tenancy right by	A 139 N 14
(b) Against life tenant - Whether bars reversioner or remain	
derman succeeding to estate on death of life tenant	. A 140 N 2
(c) Claim by adverse possessor whose title bas not ripened t	0
property attached	
(1) Claim allowed—Snit by decree-holder to set asid	Te .
order allowing claim - Suit within limitation but	
after ripening of title of adverso possessor, if main	
tamable	. A 11 N 2a
(ii) Dismissal of claim—Snit to establish right to propert	
comprised in order dismission claim—Suit within limit	
tation but after title by adverse possession has ripene	
-Adverse possessor, whether can rely upon fact tha	
anbaequent to date of order title by adverse posses	
sion has ripened into full ownership	. A 11 N 2a
(d) Of office	_
(1) Person in — Extent of interest to which such person	
can prescribe (ii) Person in possession as trustee, if can get prescriptive	. A 124 N 6
1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.1.	4 404 37 6
right to bereditary trusteeship	. A 124 N U
(1) Denial of landlord's title, whether makes possession o	.f
tonant during tonancy adverse to landlord	
(ii) Non-payment of rent, whether makes possession o	
tenant during tenancy adverse to landlord	A 139 N 12
(f) Possession of independent trespasser, whother can be tacked	
on to that of another in plea of prescription	A 124 N 7
(g) Possession of tenant after determination of lease, whother	•
adverse	
(b) Possession of tonant holding over after determination of ten-	
ancy, whether adverso to landlord	. A 139 N 2
(i) Question whether defendant's possession has been adverso to	
plaintiff is one of fact	
As reversioners_Persons entitled to—Who are	
	A 120 N 42
/ \ 3.4	42 & 144 N 11
(a) Meaning of A 19 (b) Secret adoption by Hindn widow without knowledge of the	
person in possession — Adapted son is not in constructive	
	42 & 144 N 35
	12 & 144 N 11
- Corpus possessionis	
(a) Nature of requests respective review with return of sub-	
(e) What constitutes, in case of corporal property (e) What constitutes, in case of incorporal property (f) What constitutes, in case of incorporal property (f) What constitutes, in case of incorporal property (f) What constitutes, in case of incorporal property (f) Alies	42 & 144 N 11
(b) What constitutes, in case of corporeal property A 14	42 & 144 N 11
(c) What constitutes, in case of incorporeal property Λ 14	12 & 144 N 11
Declaration and confirmation of Suit for Limitation	A 120 N 31
Degrees of	A 3 N 3

2980	GENERA	L INDEX				
Passassia	n_(Contd.)					
	ery of—Application for—By exec	ution navo	hagan Cas			
	cution sale.	aeion bute	Daser — Dee	unaer		
	erv of—Order for					
	Whether decree for possession				A 180 1	N E
	Whether kept alive by periodical	annlicatio	nna ···		A 180 I	
Dian	ossession—See under Dispossessio	n	, , , , , , , , , , , , , , , , , , ,	•••	11 100 1	
	essession and discontinuance of					
	Distinguished			A 149	& 144 1	ΝO
	Essential features common to be	th .			& 144 P	
	Illustrative cases		•••		& 144	
	essession or discontinuance of	•••	•••	/1 112		
	Assertion of under-proprietary	title by	tenant doe	s not		
	amount to dispossession			A 142	& 144 B	Ţ 9
(b)	By adoptive mother-Whethor	ne by ado	pted son	A 142	& 144 N	18
(c	Court of Wards alienating ward's	property	- Possessio	n ob-		
•	tained by alience, whether an	nounts to	discontinuan	ce by		
	ward	•••	•••	A 142	& 144 N	19
(b)	Decree of Settlement Court giving			y pos-		
	session of property is dispossess	ion of mor	rtgagors	A 142	& 144 N	19
	'Discontinuance'—Meaning of		***.		& 144 N	9
(1,	Dismissal by revenue authoritie			istra.		
(.)	tion of names - Dispossession ca	nnot be in	terred		& 144 N	U
(B)	Essentials of - Actual possession		in is necessa	A 142 &	144 N	14
(h)	Constructive possession is not si Intention if necessary to determ		non thoma has		727 71	
(11,	discontinuance	TITTE WHELL	per chere has	A 142	& 144 N	9
íı íı	Meaning of		• • •	A 142	& 144 N	2
či	Mere collecting cattle or fixing I	egs or ore	cting platfor	m on		
٠,	land by defendant, whether	sufficient	to constitute	dia.		
	possession of owner	•••	***	A 142	& 144 N	9
(k)	Mere fact that plaintiffs are un					
	ownership within 12 years do	es not an	nount to disc	conti-		2
	nuance	•••		A 142 &	144 N	30
(1	More paper dispossession by n	utation of	f names does	not	å 144 N	0
t	amount to dispossession Mere planting of trees on anoth		245 3	A 142	7 144 70	•
(m	owner's right—Whether amoun	te to diene	without agn	A 142	t- 144 N	9
(n)	Owner obtaining possession under					
(quent dispossession due to re					
	gives cause of action to him so			from		
	such dispossession			A 142 &	144 N 9	iO.
(o)	Possession by feave and license of			nt to	* * * * * * * * * * * * * * * * * * *	n
	dispossession or discontinuance			A 142 8	7 144 14	9
(P	Possession of guardian tifl ward			A 142 &	144 N	9
(a)	amount to dispossession or disco			n mta		
(4,	Prevention of proprietor from c amounts to dispossession		Sur mom for	A 142 8	144 N	9
17	Suit based on	•••	•••			
(4)	(i) Actual date of dispossession	need not	be proved	A 142 &	144 N 8	7
	(ii) Limitation—Starting point	•••	• • • • • • • • • • • • • • • • • • • •	A 142 d	144 N 9	U
	(a) A feaving village and	settling e	lsewhere -	Suit		
	by A's heirs-Date	nf disposse	esion or disc	onti- A 142 &	144 15 0	n
	nuance is date when	A left vill	lage	A 142 A	144 W 0	

OE, (III)	III INDUA				2001
Possession—Dispossession or disconti starting point—(Contd)	nnance of –	– Sult base	d on—	Limita	ation,
(b) After first disposse	ssion owner g	eting back p	osses-		
sion—Owner agai					
—Time runs from				£ 14.1	N on
(c) Last full owner di				10 111	11 30
position of widow					
				. 144	37.00
of dispossession (d) Subsequent transa			A 142	& 144	14 90
				. 111	37.00
not give fresh star	ring point		A 142	& 144	M 90
(e) Wakf property tras	isterred by t	anaaar — 1	rans-		
feree building or					
community — Ti					
and not from deat				& 144	N 90
(f) Zamindarı propert					
Purchaser put in					
fresh grant of za					
ernment-Suit by	g zamındar.	Starting po	int 18		
the date of origin	al dispossess	sion and not	suh-		
sequent grant			A 142	& 144	N 90
(iii) Uniis of proof					
(a) Onus is on plaintif	í		A 142	& 144	N 87
(b) Plaintiff proving d	isnossession	or discontin	nance		
within 12 years-	Defendant v	nust prove l	attor		
title	-Dolondade 1	-	A 142	s 144	N 87
(c) Proof of proprietar	v title in nles	ntiff mill not	shift	a III	0.
onus on to the de	y vivio ili piai Fondont	ment win nor	A 142	E 144	N 97
(iv) Suit will be harred ev				00 144	11 01
bave continuously kept	brainent one	or possessio	n ior	1. 144	37.00
12 years after his dispo	sssesion		A 142	& 144	N 92
(v) What plaintiff must prov	e		A 142	& 144	N 91
(s) Trespasser after dispossessing [
-After interval another tres	passer gets i	nto possessi	on —		** **
Latter trespass operates as fre	sn dispossess	non	A 142	& 144	N 93
(t) Trespasser after dispossessing					
hy second trespasser — Sub					
trespasser is not dispossession	of owner		A 142	& 144	N 92
(u) What constitutes—Essential el	ements—Illu	istrative case	9: A 14	2 & 14	4 N 9
Evidence of					
 (a) Entries in revenue registers (b) May be oral or documentary 		•••	A 142	& 144	N 96
(b) May be oral or documentary			A 142	& 144	N 96
(c) Mere assertion in written state	ement is not	sufficient to	show		
possession		***	A 142	& 144	N 11
(d) Mere demarcation of land in	survey map	as ma pe	son's		
possession is no evidence			A 142	& 144	N 96
(e) Payment of revenue			A 142	& 144	N 96
(f) Realization of rents			A 142	& 144	N 96
(g) Thak maps			A 142	& 144	N 96
possession is no evidence (e) Payment of revenue (f) Realization of rents (g) Thak maps (h) What is			A 142	& 144	N 96
-From agent-Recovery of-Suit for	by principal	on terminat	ion of		
lease in favour of agent-Limitatio	n			A 13	9 N 4
lease in favour of agent—Limitatio —Heritable and transferable right	•••	-	A 14	2 & 14	1 N 4
—In execution of decree subsequently	set aside D	necesson with	ather		1
				1 100	N 99
wrongful	•••	***	*	A 120	11 20

Possession-(Contd.)				
- In fact - What constitutes - Necessar,	y olomor	its	A 142	& 144 N 11
- Judgment debtor in possession - Po	ssession	of third party t	oder	
fraudulent and collusive transfer b	oy judgm	neot-dobtor, wh	ether	
possession of judgment-dobtor within			•••	A 133 N 6
Juridical possession-What is-Posse	ssion in 1	a representativo (capa-	
city, whether juridical possession	***	•••		A 3 N 3
—_Meaning of	•••	•••	•••	A 3 N 3
-Must be assumed to be lawful	•••	•••		ሌ 144 N 18
Of agoots, servants, etc Nature of	***	•••	A 142	& 144 N 57
(a) One co-owner in exclusive posse	ession—(Consent decreo e	tab-	
lishing right of other as co-or	nner	Possession of fo	rmer	
becomes possession of all co-ov				& 144 N 35
(b) One co-owner leasing his share t				
of lease the possession of latter				17 Ta4 14 99
-Ol hereditary office - Suit for - See	o under	Office - Heredi	tary	
office. Of immovable mertgaged property—S	2 t	Ti-itatian W		
such suit is instituted in Court estab				A 135 N 2
-Of immorable property	nstien by	10yai Charlor	•••	A 100 11 2
(a) Recovery of—Provisions for, unc	der Spee	in Rollet Act		ASNS
(b) Suit for	der opee	ing Relief Wer	•••	21 0 21 -
(5) 5411.01		lı suit		A 146 N 4
			•••	A 141 N 3
		property of a	lop.	
tivo mother—Limitation	•••	•••		A 141 N 7
(iv) By auction purchaser				
(a) Auction purchaser b				
ecssion—Subsequen	it suit by	him for actual	XOS-	A 133 N 8
session—Limitation			***	V 139 11 0
(b) Auctioo-purchaser, sion without setti	whether	can sue for pos	of	
delendant under O.	91 R	29 Civil P C.		A 137 N 3
(c) For possession—In			ree	
-Limitation	***	***	•••	A 137 N 2
(d) Judgment debtor be	ing io po	ssession		
(1) Amicable settle				
		o in possession		
property as at	uction-pr	archaser's license ssession by aucti		
purchaser—Li			U11-	A 138 N 7
(is) Auction purcha				••
		Auction purchase		
right to equity	if extin	guished by virtue	lo i	
		not obtain symb		
		within 12 years	ol .	A 139 N 3
confirmation o				1 100 11 0
(iii) Auction-purchas		whether essent	:-1	
condition for a	act tare, andicabil	te of Art. 138	/	133 N 7
(ir) Burden of proo	of as to	whether judgme	ıt.	
debtor was in			А	133 N 11
	-			

Possession Of immovable Judgment-debter being in p	property — Suit	for — By auction	purchaser —

nt-debtor being in possession—(Contd.)
(v) Limitation—Starting point A 138; A 138 N 2;
A 138 N 10
(vi) Resistance by person in possession, whether
necessary for applicability of Art. 138 A 138 N 4
(vii) Suit, against whom maintainable A 138 N 9
(viii) Suit for possession alleging that transfer
from indgment-debtor under which defon-
dant claims to be in possession is fraudulent
and collusive—Suit, whether one for posses-
(iz) Suit for recovery of possession which is lost
after having been obtained—Limitation A 138 N 7
(z) Suit, whether restricted to possession of
land A 138 N 3
(zi) Time during which proceedings for setting
aside sale have been prosecuted, whether
excinded A 138 N 2
(e) Judgment-debtor out of possession
(1) Against whom maintainable A 137 N 2
(11) Burden of proof A 137 N 8
(111) By auction-purchaser having once obtained
possession on subsequent cause of action—
Limitation A 137 N 2
(iv) By decree-holder purchaser—Limitation A 137 N 4
(v) Suit for actual possession after effective
eymbolic possession has been delivered to
auction-purchaser — Limitation—Starting
point A 137 N 7
(v) Time during which proceedings for setting
aside sale have been pending, whether can be
excluded A 137 N 2
(v::) When judgment-debtor is first entitled to
possessionIllustrative cases A 137 N 6
(viii) Where property is in possession of mortgagee
of judgment-dehtor A 137 N 5
(1x) Who can sue for such possession A 137 N 4
(f) Whether barred if application for possession is time-
harred A 138 N 2
(v) By heir of Hindu or Muhammadan female who is full
owner of property-Limitation A 141 N 5
(vi) By Muhammadan or Hindu ontitled to possession on
death of female
(a) By reversioner in whose favour property is sur-
rendered by female, for possession of property
alienated prior to surrender—Limitation A 141 N 9
(b) Cause of acting—When accrues A 141 N 2
(c) Essentials of applicability of Art 141 A 141 N 2
(d) For construction of will or codicil — Limitation: A 141 N 3
(e) For declaration of right to property—Limitation: A 141 N 3
(f) For property reserved to herself by female after
surrendering the rest to reversioner - Limitation: A 141 N 9
(g) Limitation—Starting point A 141: A 141 N 2

Possession - Of immovable property - Suit for - By Muhammadan or Hiudu, eto. - (Contd.)

(h) Trustees in succession for estatoof female trustee	A 141 N 10
(i) Where female is in possession not by reason of	
ber being ontitled by law to succeed to limited	
estate but in some other capacity—Limitation:	A 141 N 10
(j) Where female was in possession not as heir but	
in some other way—Limitation applicable	A 141 N 4
(k) Where no one is in possession at the death of	A 141 N 12
the female—Limitation (1) Where plaintiff does not become entitled to pos-	V 141 IV 17
session immediately on death of female.—Limi-	
tation	A 141 N 6
(m) Who can bring such suit under Art. 141	A 141 N 4
(vii) By purchaser at private sale - Limitation-Starting	
	6; A 136 N 2
(viii) By son adopted by last male owner for his property—	A 141 N 7
(ix) By transfereo from Hindu or Muhammadan who is	21 212 21 1
ontitled to possession on death of Hindu or Muhamma.	
dan female-Limitation-Starting point	A 141 N 8
(x) For possession after establishment of title when adverse	
order under S. 332, Civil P. C., 1882, is made against	
plaintiff—Limitation	A 120 N 2
(x1) For possession of estate of female who is in possession	A 141 N 10
as logatee—Limitation	A 141 N 10
(xii) For possession of estate of female who is in possession as trespasser—Limitation	A 141 N 10
(xiii) For possession of estate of female who is in possession	A 141 N 10
by contract—Limitation	A 141 N 10
(xiv) For possession of estate of female who is in possession by favour—Limitation	A 141 N 10
(xv) For property reserved to herself by female owner for maintenance after surrondoring the rest to reversioner	
—Limitation	A 141 N 9
(xvi) Founded on breach of contract in writing registered -	
Limitation	A 116 N 1
(xvii) In substance one for account and share of dissolved part.	
maughim Timitatan	A 106 N 2
	3; A 143 N 2
	3; A 143 N 2
(xx) Starting point of limitation—Whether postponed when	17. G 17 N 9
cause of action accrues to estate of deceased person: S (c) Suit for recovery	11, 0 11
(i) By person in possession without title dispossessed by	
trespasser— Whether harred under Art. 3 if brought	
after 6 months	A 3 N 5
(11) On basis of title—Failure to prove title—Decree, if can	A3N6
be given subsequently under Specific Relief Act, S. 9:	5
 (iii) On ground of possession before dispossession (a) Landlord, whether can bring such suit under 	

	4,00
Possession — Of immovable property—Suit for recovery—On groun sion before dispossession—(Contd.)	d of posses-
Specific Relief Act, S. 9, when his tonant is dis-	
possessed (b) Partial dispossession, whether entitles plaintiff to	A 3 N 3
bring such suit under Specific Relief Act, S. 9:	A 3 N 3
(iv) On ground of possession of plaintiff helore he was dis- possessed—Limitation	A 3 N 2
(v) Summary remedy on ground of possession before dis- possession under Specific Relief Act, S. 9, if not	
availed, whether precindes other remedies (vi) Under Specific Rehef Act, S. 9	A 3 N 2
(a) Limitation(b) Whether maintainable where defendant is main-	A 3
tained in possession by order under S 145, Cri- minal P. C.	A 3 N 7
(d) Whether includes possession of column of space above surface	
ad infinitum	A 39 N 6
(e) Whether includes possession of underlying strata also	A 39 N 5
Of joint property and of property separately held, distinguished. A 14:	2 & 144 N 85
——Of mortgaged property—Suit for, against transferee of mortgagee for valuable consideration — See under Mortgage—Possession of	
mortgaged property.	
—Of moveable property—Suit for	
(a) By Hindu or Muhammadan entitled to possession on death of Hindu or Muhammadan fomale—Limitation—Starting	
	A 141 N 11
	A 120 N 12 A 144 N 35
Of stranger claiming to be fractional owner is adverse to real owner	
-Principle that possession of one co-owner is possession of all	. 144 37 05
	& 144 N 35
Of transferee of co-shehait-Not adverse to other co-shebaits un- less it amounts to ouster A 142	& 144 N 35
Of trust property-Suit for, against transferee of trustee for	S 144 IV 00
valuable consideration—See under Trust—Trust property — Possession of.	
—Order of Collector dispossessing tenant as mortgagee—Subsequent	
suit for possession as occupancy tenant—Lamitation	A 14 N 2
Permissive possession	
 (a) Defendant let into possession during minority of plaintiff— Suit by plaintiff 17 years after attaining majority—Plaintiff 	
entitled to succeed if defendant failed to show change in	
character of possession more than 12 years before suit A 142	& 144 N 56
(h) Document granting permission invalid—Possession still per-	
	ሬ 144 N 56
	& 144 N 56
(d) Of office, whether advorse	A 124 N 6
(f) Possession at start adverse—It cannot by subsequent events	& 144 N 56
	& 144 N 56
(g) Possession need not he express but may be implied from	
facts and circumstances of the case A 142	& 144 N 56

Donata Demoising managing (Cont.)
Possession—Permissive possession—(Contd.)
(b) Possossion of Muhammadan widow under arrangement is
permissive A 142 & 144 N 56
(i) Possession proved to be permissive in origin
(i) Clear and affirmative evidence is required to establish
change in character of possession A 142 & 144 N 56
(ii) Mere fact of long user by permissive occupant not suffi-
cient to alter character of possession A 142 & 144 N 56
(iii) Onus of proving when and bow it became advorse is on
permissive occupant A 142 & 144 N 56
(iv) There must be open and explicit disavowal and dis-
claimer to the knowledge of owner, to establish
change in character of possession A 142 & 144 N 56
(j) Presumption as to
(i) Possession of portion of property shown to be permis-
sive—Possession of other portions presumed to be
permissive in absence of evidence to the contrary: A 142 & 144 N 56
(ii) Possession proved to be permissive in origin is pre-
sumed to continue to be so unless something occurs to
make it adverse A 142 & 144 N 56
(k) Question, one of fact A 142 & 144 N 56
(1) Sub-letting by permissive occupant amounts to denial of
title A 142 & 144 N 56
(m) Tenaot occupying adjoining land of zamindar for purposes
ancillary to agriculture—Tonant's possession is with implied permission A 142 & 144 N 56
Physical possession (a) Io case of minerals Removal of small quantity of minerals
(B) 10 case of minerals—Removal of small quantity of minerals
from bere and there will not constitute physical possession of whole mineral field A 142 & 144 N 54
(b) In case of minerals physical possession is necessarily partial: A 142 & 144 N 54
(c) Mere erection of boundary pillars does not amount to physi-
cal possession A 142 & 144 N 53
(d). Property sold admitting physical possession (i) "Admit of physical possession," meaning of A 10 N 7; A 10 N 8
(ii) Equity of redemption in usufructuarily more
perty, whether admits of physical possession A 10 N 7
F 7, 1 1 1 1 1
(iii) Land in possession of trespasser, whether admits of physical possession A 10 N 7
(1v) Property admitting of physical possession but not
under the sale, whether property not admitting of physical possession A 10 N 8
(v) Property leased, sold with stipulation that sale was to
take place after termination of lease—Whether pro-
perty admitting of physical possession A 10 N 7
(vi) Property that has been leased — Whether admits of
physical possession A 10 N 7
(m) Indicated above in mounter whether admits of wheel
cal possession A 10 N 7
(e) Property sold not admitting of physical possession - Illustra.
(o) = of city bold not admitted of infaithf lossession = Impates

•••

• • • •

tions ...

A 10 N 7

...

	2001
Possession—(Contd.)	
—Possession follows title	***
(a) Evidence unsatisfactory on both sidesStill presumption	n can
be drawn	A 142 & 144 N 15
(b) Nature of presumption	A 142 & 144 N 15
(c) Presumption not confined to particular lands or to parti	
circumstances	A 142 & 144 N 15 A 142 & 144 N 15
(d) Presumption, when to be drawn ——Possession of house is possession of site	A 142 & 144 N 13
Possessory title—Suit based on	W 147 @ 144 W 19
(a) Against person other than true owner—Limitation	A 142 & 144 N 4
(b) Apart from S 9, Specific Relief Act-Maintainability	A 142 & 144 N 4
(c) Burden of proof	A 142 & 144 N 4
Presumption as to - Possession of part does not infor possessi	on of
whole	A 142 & 144 N 54
Presumption of ownership from possession	A 142 & 144 N 4
Question, one of fact	A 142 & 144 N 98
Quiet possession	
(a) Covenant for—Breach of—Suit for—Limitation	A 83 N 7
(b) Covenant for quiet possession, whether contract of indem	nity: A 83 N 7
	4 00 37 5
of—Su	A 83 N 7
-Limitation	A 83 N 7
	A 142 & 144 N 4
—Suit for	
(a) Against person claiming to be in possession in right of a	dop.
tion	
(1) Limitation	A 118 N 2
(ii) Whether barred if suit for declaration of invalid:	
adoption is barred	A 118 N 2
(1) 4 22 24 4 4 4 4 4 4 4 4 4 4 4 4 4 4 4	
of possession and disposses	
	A 142 & 144 N 2
dispossession does not re	A 142 & 144 N 2
(iii) buil trained as it there was no dispossession.—Art.	
whether can be avoided	A 142 & 144 N 2
(a2) Articles 142 and 144 apply only to suit for possession	A 142 & 144 N 3
(a ³) Based on possessory title	A 142 & 144 N 4
(a4) Based on previous possession—Snit under Specific Relief	
and suit for recovery of property comprised in order u	
Crimical P C, or Mamlatdar's Courts Act, respecting	pos-
ssesion of immovable property, distinguished	A 47 N 2
(a ⁵) Based on proprietary title	A 142 & 144 N 5
(b) By auction-purchaser for possession alleging that tran	
from judgment-debtor under which defendant claims t	
in possession is fraudulent and collusive—Whether one	. A 138 N 4
possession within Art. 138	
(b) By co-sharer—Co-sharer in separate ressession of com	
property dispossessed by another co-sharer—Onus on pl tiff to prove dispossession within 12 years of suit	
titi to provo disposession within 12 years or only	11 117 W 144 1(D)

2988	GENERAL INDEX	
	on—Suit for—(Contd.)	
	By heir for possession of property alienated by administrator without permission of Conrt—Limitation	A 91 N 1
-	By Hindu ward for possession of property alionated by defacto guardian—Limitation	A 44 N 6
	By legatee for possession of property alienated by executor— Limitation	A 91 N 1
(1	By minor on ground that sale was vitiated by fraud and collusion on part of his guardian—Whether one for setting aside sale	A 12 N
(g	By patnidar	
	 (i) For possession of chaukidari chakran lands transferred by Government to zamındar—Limitation (ii) To recover possession of chaukidari chakran lands 	A 113 N 3
(h	which have been resumed and settled with zamindar by Government—Limitation—Starting point A 14's) By person deriving title from Government—Suit for posses-	& 144 N 90
	sion of land purchased from Government—Suit against per- son in adverse possession against Government—Limitation:) By transferces of Government for land transferred by Gov-	A 149 N 7
	ornment — Joining Government as co-plaintiff, whether brings case within Art. 149	A 149 N 7
	By trustees in succession for property in trusteeship of female —Limitation	A 141 N 10
(1) By ward in respect of property transferred by guardian— Suit where allense is in possession of property by virtue of the transfer—Limitation Defeatantory suit, whether one for possession Defeatant impleaded in time but claims his share of suit	A 44 N 2 A 185 N 8
	property in written statement submitted 12 years after cause of action—Claim not barred A 142	& 144 N 91
(12	Defendant made party after expiry of limitation—Suit harred as against him A 142	& 144 N 91
	Distinguished from one for specific performance by giving possession	A 113 N 3
(m)		& 144 N 90
	(n) Question whon possession of defondant becomes adverse to plaintiff, is one of fact A 142	& 144 N 90
	(in) Starting point—Time runs from date when possession of defendant becomes adverse to plaintiff A 142	& 144 N 90
) For one-half share of property purchased jointly by plaintiff and defendant and for accounts of profits—Limitation	A 89 N 2
) For property alienated by mahant of Math — Suit by succeeding mahant—Limitation	A 91 N 10
(r	o) For property alienated by minor as major—Suit by minor on attaining majority—Limitation	A 91 N 15
	For property alienated by trustee of temple—Suit by succeeding trustee—Limitation	A 91 N 10
()	r) For sharo in property alleged to have been partnership pro- perty, whether harred if suit for accounts of dissolved part- nership is barred on that date	A 106 N 5

GENERAL INDEX	2989
Possession—Suit for—(Contd.)	
(s) For property sold in execution—Maintainability—Provisions	
nf Civil P. C. as to	A 138 N 2
(t) For property of which plaintiff has executed sale deed in	
favour of defendant-Allegation that deed is nominal and	
not intended to be operative—Limitation	A 91 N 3
(t1) Limitation	
(i) Art 142, whether confined to suit for possession on	
ground of possessory title or whether applicable to all	
cases of dispossession A 14 (ii) Art. 144 is only residuary A 14:	2 & 144 N b
(ii) Art. 144 is only residuary A 14: (iii) Plaintiff alleging defendant's possession to be permis-	2 % 144 N 2
sive but not proving it — Defendant denying such	
allegation—Art. 142 applies A 142	& 144 N 87
(iv) Special or local law prescribing limitation different	
from that in Limitation Act-Period prescribed in	
former will apply A 142 &	2 144 N 100
(t ²) Nature of	
(1) Contemplated by Art. 144 A 14	2 & 144 N 5
(ii) Substance and not form of relief claimed, that deter-	
mines obaracter of suit	2 & 144 N 3
	2 & 144 N 3
physical possession A 149 (t ³) Not specially provided for—Limitation	A 144
(t) On dispossession otherwise than in due course of law-Even	
as against true owner	2 & 144 N 4
	A 148 N 14
(u1) Onus of proof	A 143 N 18
(a) Judgment not inter partes does not alter burden of	
proof as between rival claimants A 149	& 144 N 88
proof as between rival claimants A 142 (ii) Plaintiff must prove better title A 142 (iii) Plaintiff must prove subsisting title A 142	& 144 N 87
(iii) Plaintiff must prove subsisting title A 142	& 144 N 87
(iv) Plaintiff must succeed on strength of his title and not	
nn weakness of defendant's case A 142	& 144 N 87
(v) Plaintiff proving ownership of property and also that	
defendant's entry not in contravention of his title—	
Onus is shifted to defendant to prove adverse pos- session	& 144 N 87
(vi) Prior possession is proof of better title as against	W 111 11 01
subsequent possessor without title A 142	& 144 N 87
subsequent possessor without title A 142 (vii) Proprietary title is hetter than pessessory title A 142	& 144 N 87
(viii) Question of onus immaterial when evidence is let in	
	å 144 N 89
(u2) Plaintiff in possession and defendant entering an property	11/170
under right derived from plaintiff—Limitation A 142	6 144 N 2
(u3) Plaintiff not in possession at all but getting title to it while defendant in lawful possession—Limitation A 142	£ 144 N O
(u ⁴) Possession given under benami document—Suit for possession	C 144 N 2
hy executant against benamidar—Art. 144 applies A 142 a	& 144 N 60
(u ⁵) Possession given under void document—Suit by transferor	
for possession-Art. 142 and not Art. 144 applies A 142 a	& 144 N 60
(u ⁶) Prayer in such case—Nature of A 142	& 144 N 3

Possession-Suit for-(Contd.)

	-Suit for-(Contd.)		
(v)	Relief involving negativing decree obtained by defenda	nt—	A 95 N 6
(v^1)	Scope of Art. 144 wider than that of Art. 142:	A 142	& 144 N 7
	Suit based on title—Limitation		A 113 N 3
	Suit based on title and suit for specific performance of	40D	
(2)	tract by giving possession—Distinction hetween—Illu	con-	
	tive cases	onra-	A 113 N 3
()			V 110 W 0
(3)	Suit for payment of certain sum of money and in defau		
	payment, for possession, whether nnn for possession wi Art. 137	tnin •••	A 137 N 3
	Suit for possession of property—S. 20 does not apply	•••	S 20 N 4
(z1)	Suit for redemption of property, whether one for posses within Art. 137		A 137 N 3
$(2^2)^{-1}$	Suit for setting aside void transfer barred-Still suit	for	
•	possession of property transferred can be brought:	A 142 &	144 N 60
(z^3)	Suit for setting aside voidable transfer barred—Snit for	pos-	
	session of property transferred is also barred:	A 142 &	144 N 60
(z4)	Suit where defendant's entry on property is consistant v title of plaintiff or permissive—Limitation	vith A 142	& 144 N 2
(-5)	Test for applicability of Art. 142		& 144 N 2
	Under Art. 142—Defendant must be in possession at		
(z-)	date of suit ·	1140 £	144 N 10
(-7) ·	Upon plaintiff's dispossession, by purchaser where sale is		11111
(2)	and void—Limitation	Huit	A 12 N 1
108)	What is	•••	24 20 21 -
(2)	(1) Alienation by manager—Suit for possession by mi	DOL	
	· co-parceners on attaining majority	A 142	£ 144 N 3
	(ii) Alienation by one heir not binding on another-	Snft	
	by latter against alience for possession	A 142	& 144 N 3
	(iii) Dispossession by public servant—Suit for possession:	A 142	& 144 N 3
	(iv) Possession must be the primary relief asked for:	A 142	& 144 N 3
	(v) Suit by aliyasanthana family to recover prope	rty	
	alienated by ejaman		144 N 3
	(vi) Suit by co-parcener for possession of property sold	by	
	other co-parcener		144 N 3
	(vii) Suit by owner for possessinn of his wall deliberat	ely	PKSS
			144 N 3
	(viii) Suit by plaintiff claiming as trustee of mutt and	ng 11	
	such entitled in possession, praying that he be entit		
	to collect rents and profits from receiver appoin	A 149 A	144 N 3
	(ix) Suit by warshippers of Thakurdwar for ojectment		
	transferee and restoration of property to trust	00	
	whether suit for possession within Art. 134	Λ	134 N 3
	(v) Suit for Jackantian that mathemat area public pather	ny	
	and for injunction to remove obstruction thereto:	A 142 &	144 N 3
			144 N 3
	(att) Cuts to the companies and according to the design and design and the		
	plaintiff not bound to ask for such cancellation :	A 143 &	144 N 3
			144 N 3
	of entry in Record of Rights	V 127 C	

Possession-Suit for-What is-(Contd.)

A 142 & 144 N 3

right thereto on basis in await
(xv) Suit for possession with ancillary prayer for removal of
trees A 142 & 144 N 3
(xvi) Suit for redemption, whether suit to recover possession
within Art. 134 A 134 N 3
(xvii) Suit for removal of beams constructed by defendant, to
overhang plaintiff's land A 142 & 144 N 3
(xviii) Void transfer of minor's property — Suit by minor for
possession after setting aside transfer A 142 & 144 N 3
(z ⁹) What is not
(i) Property contracted to be transferred — Suit for re-
covery A 142 & 144 N 3
(ii) Suit for damages for trespass A 142 & 144 N 3
(m) Suit for declaration of title is not one for posses.
sion A 142 & 144 N 87
(iv) Suit for mere declaration of right to property: A 142 & 144 N 3
(v) Suit for possession of office which is not hereditary: A 142 & 144 N 3
(vi) Suit for possession of property alienated by plaintiff's
guardian during minority A 142 & 144 N 3
(vii) Suit for pre-emption and consequential prayer for pos-
session A 142 & 144 N 3
(viii) Suit for redemption of usufructuary mortgage with
consequential prayer for possession A 142 & 144 N 3
(ix) Suit to set aside sale on ground of fraud and nindue
influence, with consequential relief for possession: A 142 & 144 N 3
(x) Suit where plaintiff does not himself seek possession
but asks to place third party in possession . A 142 & 144 N 3
(z10) What plaintiff must prove to claim benefit of Art 144: A 142 & 144 N 87
(z ¹¹) Where plaintiff has to establish validity of adoption as basis
of his claim to possession—Limitation A 119 N 2
(z12) Where rossession cannot be sued for without first obtaining
some other relief as condition precedent.—Suit, whether can
be treated as one for possession A 136 N 2
(z13) Where possession cannot be sucd for without first setting
aside a certain order of Court—Suit for possession, whether
harred if suit for setting aside nider is time-baired A 136 N 2
- Suit for confirmation of, by declaration of title - Plaintiff must
prove possession and title A 142 & 144 N 87
-Taking possession-Meaning of, within Art. 12fi A 126 N 8
—Termination of
(a) What acts of defendant are sufficient to establish termina-
tion must be judged from the circumstances and nature of
property involved in each case A 142 & 144 N 9
(b) What constitutes A 142 & 144 N 9
- Under invalid transactions - Whether adverse - See under Adverse
possession.
Under transfer which subsequently becomes invalid — See under Adverse possession.
Vendor out of possossion-Meaning of A 136 N 3

Posses

sion—Suit for—(Contd.)	
(v) Relief involving negativing decree abtained by defendant-	
Limitation	
	142 & 144 N
(w) Suit based on title—Limitation	A 113 N
(x) Suit hased on title and suit for specific performance of con	
tract by giving possession—Distinction between—Illustra	
tive cases	. A 113 N
(y) Suit for payment of certain sum of money and in default o	
payment, for possession, whether one for possession within	
Art. 137	C 00 M
(z) Suit for possession of property—S. 20 does not apply	
(z1) Suit for redemption of property, whether one for possession within Art. 137	1 107 N
(23) Suit for setting aside void transfer barred-Still suit for	r 42 & 144 N 6
(z³) Suit for setting aside voidable transfer barred—Suit for pos	*
	.42 & 144 N (
(z*) Suit where defendant's entry on property is consistant with	1
	142 & 144 N
	142 & 144 N
(z ⁶) Under Art. 142—Defendant must be in possession at the	
date of suit A 1	42 & 144 N 1
(z²) Upon plaintiff's dispossession, by purchaser where sale is null	A 12 N
and void—Limitation	A 12 II
(z ⁸) What is (i) Alienation by manager—Suit for possession by minor	
· co-parceners on attaining majority A	142 & 144 N
(ii) Alienation by one heir not hinding on another—Suit	1
hy latter against elience for possession A	142 & 144 N
(iii) Dispossession by public servant—Suit for possession: A	142 & 144 N
(iv) Possession must be the primary relief asked for: A	142 & 144 N
(v) Suit by alivaeanthana family to recover property	,
	142 & 144 N
(vi) Suit by co-parcener far possession of property sold by	142 & 144 N
(wii) Suit he amon for passagain of his wall deliberately	
encroached upon and built upon by defendant: A l	42 & 144 N 3
(viii) Suit by plaintiff claiming as trustee of mutt and as	
such entitled to possessing, praying that he be entitled	
to collect ments and profits from manipus appointed	
	42 & 144 N 3
(ix) Suit by worshippers of Thakurdwar for ejectment of	
transferce and restoration of property to trustee,	A 134 N 3
whether snit for possession within Art. 134 (x) Suit for declaration that pathway was public pathway	
and for injunction to remove abstraction thereto: A 1	43 & 144 N 3
(xi) Suit for ejectment of onn-proprietor in the Punjab	37.0
from site A 1	42 & 144 N 3
plaintiff not bound to ask for such cancellation: A 1	42 & 144 N 3
(xiii) Suit for possession and mesan profits and for correction	42 & 144 N 3
nf cotry in Record of Rights A 1	200

Possession—Suit for—What is—(Contd.)
(xiv) Suit for possession of land on declaration of plaintiff's
right thereto on basis of award A 142 & 144 N 3
(xv) Suit for possession with ancillary prayer for removal of trees A 142 & 144 N 3
trees A 142 & 144 N 3 (xyi) Suit for redemption, whether suit to recover possession
within Art. 134 A 134 N 3
(xvii) Suit for removal of beams constructed by defendant, to
overhang plaintiff's land A 142 & 144 N 3
(xviii) Void transfer of minor's property - Suit by minor for
possession after setting aside transfer A 142 & 144 N 3
(zº) What is not
(i) Property contracted to be transferred — Suit for re-
covery A 142 & 144 N 3
(ii) Suit for damages for trespass A 142 & 144 N 3 (iii) Suit for declaration of title is not one for posses-
sion A 142 & 144 N 87
(iv) Suit for mere declaration of right to property: A 142 & 144 N 3
(v) Suit for possession of office which is not bereditary: A 142 & 144 N 3
(vi) Suit for possession of property alienated by plaintiff's
guardian during minority A 142 & 144 N 3
(vii) Suit for pre-emption and consequential prayer for pos-
Bession A 142 & 144 N 8
(viii) Suit for redemption of usufructuary mortgage with consequential prayer for possession A 142 & 144 N 3
(ix) Suit to set aside sale on ground of fraud and undue
influence, with consequential relici for possession A 142 & 144 N 8
(x) Suit where plaintiff does not himself seek possession
but asks to place third party in possession A 142 & 144 N 3
(z10) What plaintiff must prove to claim benefit of Art 144: A 142 & 144 N 87
(z11) Where plaintiff has to establish validity of adoption as basis
of his claim to possession—Limitation A 119 N 2 (z ¹²) Where ressession cannot be sued for without first obtaining
some other relief as condition precedent—Suit, whether can
be treated as one for possession A 136 N 2
(213) Where possession cannot be seed for without first setting
aside a certain order of Court-Suit for possession, whether
barred if suit for setting aside order is time-baired A 136 N 2
- Suit for confirmation of, by declaration of title - Plaintiff must
prove possession and title A 142 & 144 N 87
Taking possession—Meaning of, within Art. 126 A 126 N 8
Termination of (a) What acts of defendant are sufficient to establish termina.
tion must be judged from the circumstances and nature of
property involved in each case A 142 & 144 N 9
(b) What constitutes A 142 & 144 N 9
Under invalid transactions-Whether adverse-See under Adverse
possession.
Under transfer which subsequently becomes invalid See under
Adverse possession
—Under void lease—Nature of A 139 N 18
—Vendor out of possession—Meaning of A 136 N 3

2992 Possession—(Contd.) -What is (a) Owner of diluviated land, whether deemed to be in possession of the land A 142 & 144 N 11 (h) Owner of land who has parted with surface rights, whether A 142 & 144 N 11 deemed to be in possession of subsoil (c) Possession in fact and possession in law distinguished: A 142 & 144 N 11 -Wrongful possession (a) Possession of tenant after determination of lease, whether A 139 N 13 wrongful ... (h) What is (i) Obstruction to anction-purchaser taking possession removed by order of Court and possession delivered-Suit by obstructor successful-Possession of purchaser pending suit, whether wrongful A 109 N 8 (ii) Possession of mortgagee where mortgage is void or A 109 N 6 invalid against mortgagor, whether wrongful (iii) Possession of person under decree subsequently set A 109 N 8 aside, whether wrongful ... Power of attorney -Want of, in favour of mother suing on behalf of her sons -- Whether S 14 N 24 other cause of a like nature to defect of jurisdiction within S. 14; Pre-emption ——Acknowledgment by vendee of mortgage on property — Whether S 19 N 34 binding on pre-emptor -Application for pre-emption under S 26 and S. 188, Bengal Tenancy Act, by some only of the cosharers entitled to pre-empt-S 22 N 20 All co-sharers not impleaded as parties-Effect -Contract for-Whether subject to rule against perpetuities enacted A 10 N 6 in S. 14, T. P. Act - Decree for pre-emption fixing period for plaintiff's depositing amount in Court-Time requisite in obtaining copy of order can-S 12 N 4 not be excluded... -Failure to give pre-empter notice of sale - Whether hrings a case S 18 N 9 within S. 18 -Fraud-Sale effected in favour of one person but really in favour of another who actively conceals such fact - Plaintiff thereby kept S 18 N 9 from knowledge of his right-S. 18, if applies A 12 N 10 ----Ground of-For setting aside sale-Limitation-Starting point ... -Mere silence of vendor and vendee - Whether amounts to fraud S 18 N 9 within S. 18 -Notice to pre-emptor - Omission to issue notice with deliberate intention of keeping him from knowledge of his right - Whether S 18 N 9 amounts to fraud -Plaintiff having right of pro-emption in possession at time of sale -Subsequent dispossession of plaintiff by vender - Cause of S9N7 action for plaintiff's suit for possession, when arises -Possession of property sold, openly taken by vendee immediately after sale - Sale not kept from knowledge of vendee - Transac-

tion, if amounts to fraud within 8: 18 where pre-emptor may not

have knowledge of sale

S 18 N 9

Right of	
(a) Based on contract	
(i) Contractual obligation annexed to the nwnership of	
property is within meaning of S. 10, T. P. Act	A 10 N 5
(ii) Whether enforceable against transferee with notice or	
gratuitous transferee	A 10 N 5
(iii) Whether subject to rule against perpetuity in S. 14,	
T. P. Act	A 10 N 5
(b) Enforcement of—Suit for	
(i) Against purchaser whose purchase has given rise to	
right of pre-emption-Limitation	A 10 N 1
(ii) Against transferce of purchaser whose purchase has	
given rise to right of pre-emption - Nature of such	
suit—Limitation	A 10 N 1
(iii) Burden of proof	A 10 N 12
(iv) Decree for pre-emption—Effect of	A 10 N 2
(v) Doctrine of his pendens, whether applies	A 10 N 15
(vi) Filed one year after transfer to vendee but within one	
year after transfer to transferee of vendee-Whether	
barred	A 10 N 14
(vii) Governed by Punjab Pre-emption Act, S. 30- Limita.	
tion	A 10 N 13
(viii) In respect of contract to sell	A 10 N 1
(ix) In respect of execution sales—Limitation	A 10 N 9
(x) In respect of mortgage by conditional sale becoming	
'sale' on foreclosure	
(a) Limitation—Starting point	A 10 N 9
(b) Where case is governed by Punjab Pre-emption	
Act. S. 30	A 10 N 9
(c) When property does not admit of physical pos.	
session	A 10 N 9
(xi) In respect of mortgage, sale or lease pre-empted -	
Limitation	A 10 N 1
(xii) In respect of sale—Oral sale of intangible interest	A 10 N 1
(xiii) In respect of sale to different persons where there is	
distinct specification of shares of each and their prices	
—Limitation	A 10 N 14
(xiv) In respect of valid sale of property not admitting of	
physical possession and not evidenced by any regis.	
tered instrument—Limitation	A 10 N 1
(xv) Limitation—Starting point A	10, A 10 N 6
(xvi) Minority, whether ground for extending period of limi.	
tation for pre-emption smit	A 10 N 6
(xvii) Necessary parties	
(a) Where before institution of suit, vendee had	
transferred his right to others, decree, whether	
could be enforced against transferees who were	
not impleaded as parties in the suit against	
vendee	A 10 N 14
(b) Where sale is joint sale in favour of several per-	
50ES	A 10 N 14
(xviii) Parties to suit	A 10 N 14
(xix) Plea of limitation, value of	A 10 N 16

Pre-emption-Right of-Enforcement of, snit for-(Contd.)

Pre-emption—Right of—Enforcement of, snit for—(Contd.)	
(xx) Principle underlying the fixing of starting point for	
such suit as dato of delivery of physical possession or	
registration of instrument of sale	A 10 N 1
(xxi) Rival pro emptor added as party to suit	A 10 N 14
(xxii) Setting aside sale by person who has no anthority to	
sell except under certain conditions.—Limitation	A 10 N 13
(xxiii) To enforce contract, which among several other items,	11 20 11 20
includes recognition of right of pre-emption—Limita-	
tion	A 10 N 13
(xxiv) To enforce pre-emption right founded on special con-	11 10 21 10
	A 10 N 5
(\m	A 10 N 14
· · · · · · · · · · · · · · · · · · ·	V 10 W 13
(xxvi) When instrument of sale is registered	. 10 37 11
(a) Provisions of Registration Act, S. 60 as to	A 10 N 11
. (b) Sale certificate granted to purchaser in court	
auction under provisions of Civil Procedure	
Code, whether registered instrument so as to	
start limitation	A 10 N 11
(xxvii) "When purchaser takes physical possession of property	
sold"	
(a) "Physical possession"—Meaning of A 10 N	7; A 10 N 8
(b) Physical possession, whether equivalent to sym-	•,
	A 10 N 7
bolic possession	23 20 21 1
(c) Possession, whether must have been taken under	A 10 N 8
FINA PRINT PT	11 10 11 0
•	
at administration	A 10 N S
of physical possession	** ** **
(e) Property, when admits of physical possession and	A 10 N 7
when not—Illustrations	,, ,, ,,
(f) Prospective purchaser taking possession from pros-	
pective vendor under convenient arrangement and sale deed executed subsequentlyWhether	
takes possession under the sale so as to start	
limitation	A 10 N 8
(g) Purchaser of property already in his possession as	
lesseo or mortgagee, whether can take posses-	
sion under the sale so as to start limitation	A 10 N 8
(xxviii) Where fraud of vendor and vendee keeps pre-emptor in	-
ignorance of his right	A 10 N 6
(xxix) Where necessary party is minor and is made party	-
within time but for whom guardian ad litem is	
appointed after limitation	A 10 N 14
(xxx) Where part of property is taken possession of on one	
dato and other part on later dato	A 10 N 10
(xxxi) Where part of property sold is not capable of physical	
possession	A 10 N 10
possession (xxxii) Where part of property sold is not capable of physical	A 10 N 10
(xxxii) Where part of property sold is not capable of physical	
(vxvii) Where part of property sold is not capable of physical possession and there is also no registered sale evidencing sale	A 10 N 10 A 10 N 10
(vxvii) Where part of property sold is not capable of physical possession and there is also no registered sale evidencing sale	A 10 N 10
(xxxii) Where part of property sold is not capable of physical possession and there is also no registered sale evidenc-	
(xxxii) Where part of property sold is not capable of physical possession and there is also no registered sale evidencing sale (xxxii) Where pro-emption right is in respect of forcelosure of	A 10 N 10
(xxxii) Where part of property sold is not capable of physical possession and there is also no registered sale evidencing sale (xxxii) Where pro-emption right is in respect of forcelosure of	A 10 N 10

				250	70
Pre-emption-Right of-Enforcem					
tation (xxxv) Where pre-emption		• • • •	•••	A 10 N 1	13
contract to sale has (xxxvi) Where property does at date of sale and	been entered in not admit of	nto—Limita: physical pos	tion session	A 10 N	1
also (xxxvii) Where special or loci tion different to th	al law prescribe	s period of	limita.	A 10 N	6
tion Act	as Inescribed n	y 3110, 10, 1	minita.	A 10 N 1	2
(XXXVIII) Where subject of sale (XXXIX) Where subject of sale no possession can be	admits of phys	sical possessi	on hut	A 10 N 1	
tion	CARCH HIMEL	ne sale — I	111111111111111111111111111111111111111	A 10 N 1	•
(xl) Where subject of sal session and there is	s either no mst	rument of a		21 10 M 1	3
(x	5 Ennythmenner		ree is	A 10 N 1	3
(.) Faundad an Iam	• •	• •	•••	A 10 N	9
• • • • • • • • • • • • • • • • • • • •		*	ments	A 10 N	3
of British India			•••	A 10 N	
(iii) Recognition of, in M			,	A 10 N	3
(d) Founded on special contra Limitation	act-Luiorceme	:nt 01—Suit		A 10 M	
(e) Meaning of	•••	•••	•••	A 10 N a	
(f) Plea of, in defence		• •	•••	A 10 N 1	
4-6 Table 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		emption		A 10 N	
	parts	of India	***	A 10 N	
	•	• •	•••	A 10 N	1
(i) Mere error in instru	nent of sale, wh	ether alters	natura		
of transaction so as				A 10 N 9	a
(ii) Mortgage hy conditi	onal sale becom	ing on force	losuro		-
"sale," whether sale	e giving rise to p	pre-emption	right:	A 10 N 9	3
(a) Sale, whether (b) Sale, whether	must he complet must be in actu	te mal form a d	eed of	A 10 N 9	3
sale		***		A 10 N S	3
	Gift deed, whet	her sale givn			
to pre-emptic (iv) Subsequent agreeme convert what is out		ties, whether		A 10 N 2	•
saction so as to tak			•••	A 10 N 9	
(k) Whether arises in execution	n sale		• • • •	A 10 N 9	
(I) Whether arises upon trans	fer effected by d	lecree	•••	A 10 N 9	,
Suit for (a) By one pre-emptor agains that plaintiff has superi	or right of pre-	emption and	1 that		
decree obtained by other		hased on fr			
Limitation	•••	•••	•••	A 120 N 5	į

2990 GENERAL INDE.	X.		
Pre-emption-Suit for-(Contd.)			
(b) In respect of mortgaged property—Mortgage containing covo- nant that on default of payment within eartain time mort- gage would become a sale absolute—Foreclosure decreo			
obtained on such mortgage—Limitation (c) Legal disability of person entitled to such	m A 120 N 5		
period of limitation (d) Limitation—Suit not falling under Art.	S 8; S 8 N 2, 3 10 A 120 N 5		
(o) Necessary parties	S 22 N 20		
(f) Person under disability, snit by-Limita			
(g) When cause of action accrues to estate of			
Starting point of limitation, if postpone (h) Whether suit for possession within S. 28			
	5252.5		
Pre-emptor Of mortgaged property — Suit against, for	normant of manage		
eharged upon mortgaged property—Limitatio			
Premia, recovery of			
Suit for—By assured—Limitation	A 87		
Prescription			
Law of			
(a) Meaning of	Preamble N 3		
(b) Reason and object of	Preamble N 4		
Plea of			
(a) Defendant, whether ontitled to tack on pendent trespassor to that of his own,	in plea of prescrip-		
tion (b) Suit for possession of office—Defendant,			
tack on adverso possession of his prodec own in establishing his plea of prescrip			
Prescriptive title			
	disability—Right, if I period S 6 N 34		
Presidency Small Cause Courts Act			
——Chapter 7			
(a) Order under—Whether must be set asi			
title (b) Proceedings under—Whether suit	1 10 17 0		
(e) Suit to recover property after proceedings	a under - Art. 11-A		
not applicable	A 11.A N 8		
Section 28			
(a) Order under—Nature of	A 11 N 20		
(b) Provisions of			
(e) Suit by person against whom order is pas (i) Art. 11 and Art. 29 distinguished (ii) I'ailuro to bring within limitation	A 11 N 10		
'Claim' and 'Attachment.'			
(a) Attaching decree-holder, who limitation Insolvency Cour	ther can move after		
which is subject of claim			
judgment debtor has been su	absequently declared		
insolvent	7 11 2 3		

	200.
Presidency Small Cause Courts Act — S. 28 — Suit by person a order is passed — Failure to bring within limitation—(Contd)	gainst whom
(b) Effect on right of claimant in respect of stranger	
not party to claim proceedings	A 11 N 3
(c) Stranger not party to claim proceedings, whether	
can set up such failure as bar to action against	
bim	A 11 N 3
(iii) Limitation A	11; A 11 N 2
(iv) Rehef which can be prayed for in such suit-Nature of:	A 11 N 9
(v) Suit barred under other Article-Suit, whether main-	
tainable under Art. 11	A 11 N 2
(vi) Suit based on cause of action which accrues subse-	
quent to date of order-Limitation	A 11 N 2a
(vii) Where order is against minor	A 11 N 5
(viii) Who can bring such suit within Art. 11	A 11 N 4
•	
Presidency Towns Insolvency Act	
-S. 7-Application under-For rents and profits received by mort-	
gagee where mortgage by insolvent was annulled, whether equi-	
valent to suit for profits wrongfully received	A 109 N 12
Section 8-Review under-Application for-Limitation	A 162 N 3
Price	
—Meaning of	A 52 N 3
Principal and agent	
—Acknowledgment of liability by duly authorized agent	S 19 N 50
	5 10 11 00
Agent employed jointly by more than one principal	1 00 17 01
ther bound to account separately	A 89 N 21
Agent, if trustee for principal in respect of latter's money that	
may come into his hands	S 10 N 11
- Agent in making payment exceeding his authority or doing some-	
thing not actually covered by his authority-Whether can bind	
principal so as to give the creditor benefit of S. 20	S. 20 N 18
Agent of two principals Use by agent of money belonging to one	
principal for benefit of another—Suit by former principal against	
latter for recovery of such money—Limitation	A 120 N 19
agent in satisfaction of principal's claim-Proceedings set aside	
on ground of fraud-Money refunded by principal - Suit by	
principal to enforce original hability to account-Plaintiff, if	
entitled to fresh cause of action on former proceedings being set	
aside	S 9 N 11
Knowledge of agent, whether knowledge of principal	A 95 N 13
Liability of agent to principal	A 89 N 2
Person merely in possession on behalf of another as manager or	
agent-Whether trustee for him	S 10 N 9
- Relationship of joint purchasers of property, whether one of princi-	
pal and agent	A 89 N 2
- Suit by principal against agent	
(a) For accounts—See under Accounts	
(b) For accounts and to enforce charge on immovable property	
created to secure moneys which might be found due from	
agent in taking accounts—Limitation	A 132 N 3
-	

Principal and agent—Suit by principal (c) For movesble property received by				
for (1) Applicability of Art. 89 and	Aut 115		•	A S9 N 3
	Art. 110	•••		89; A 89 N 2
(ii) Limitation	***	T		59; A 59 A 2
(iii) Where there is express agre	ement to a		ımı.	A 89 N 3
(d) For neglect or misconduct—Limit		•••	Δ	90; A 90 N 1
(e) For possession—On termination		ferons of ea		20,
—Limitation	•••	•••	•••	A 139 N 4 A 120 N 19
(f) For recovery of account papers-			•••	A 120 A 15
(g) For recovery of moneys spent by -Limitation		•••	•••	A 120 N 2
(h) For recovery of sums misappropri	ated by age	nt—Limitati	ion:	A S9 N 2
(i) For specific sum found due fr	om agent	after taking	of	
accounts-Limitation	***	•••	•••	A 89 N 2
(j) To enforce charge on immovable	property c	reated to see	ure	A 59 N 2
moneys which might be found d	ue from age	nt—Limitat	ion:	A 59 M 2
Principal and surety				
Acknowledgment or payment by one-	_Whether	will save li	mi-	~ ~ * * * * *
tation against the other	•••		•••	S 21 N 12
Debts of principal debtor and sorety.	if distinct	for purpose		S 21 N 12
S. 20		•••	•••	A S1 N 2
Relationship of-Basis of-Whether or			•••	V or v
-Snit against surety under bond for pa	yment by	indgment del	ntor	
of plaintiff-Time during which the p				
cution against judgment-dehtor unde	r decree-	whether can		S 14 N 16
deducted under S. 14 Whether joint contractors within S. 21	•••	•••	•••	S 21 N 12
	•••	•••	•••	~
Private person				
	***	•••	•••	A 149 N 11
Privilege				
- Exclusive privilege-Infringement of-	Snit for cor	npensation		
(a) Limitation—Starting point	•••	•••		40, A 40 N 5
(b) Suit for injunction restraining	defendani	from mak	ing	
infringement-Whether one for	compensat	ion for intrin		A 40 N 1
ment within Art. 40	•••	•••	•••	A 40 11 1
Privy Council				
——Appeal to—See under Appeal. ——Decree of—See under Decree.				
Decree of -See under Decree.	. 7 6 41 . 4	F 4 4 5		S 3 N 17
-New plea as to limitation, if can be rais -Order of Enforcement of Application	ed for the	arst time	•••	3011-
	i ior—See i	maer Ordet.		
Prohate				
- Acknowledgment of liability by execute	r before gr:	int of probat	e —	S 19 N 55
Whether binding on estate			•••	5 19 . 05
Application for probate-Objection the				
estate of deceased—Reply by applicate Whether amounts to sufficient acknown	leddment -	g pro rishini edae S 10		S 19 N 47
Contested proceedings for grant of prob			,	2 CI 10 N 1
Probate and Administration Act				
trobate and Administration Act				4 156 N 3

Procedure				
-Law governing-Lex fori				S 11 N 1
Proceedings				
Conversion of-Limitation applic	ahle, how deter	mined		S 3 N 33a
Other then suit What are	.,			A 13 N 2
-To which Act applies	•••			Preamble
To which Act applies Valid presentation—What is	• • •			S 4 N 14
Profits				
Of immovable property-Meaning				A 109 N 13
Of immovable property sold up to	o date of sale —	- Who can	recover	
such profits	. ***			A 109 N 15
Of land-Share of-Suit for-O			ntitling	
plaintiff to sue for such share-		• •		A 116 N 8
- Of property of intestate-Suit for	r—Limitation		r.,	A 123 N 2
-Received by co-owner - Suit for				1 100 17 00
tation	• •	• •	•••	A 120 N 28
Suit for (a) Attachment of lands under	. C 146 C.	unal D C	Cta	
filed to establish rights of	r S. 140, Cim	lman r. O.	-ouits	
attached property deposit	od in Court by	defendant	Anmad	
pendency of suits—Suhso	cu ili coult by	nice to th	e offeet	
that attached lands sho				
plaintiff against defendar	at for profits	withdrawn.	_Limi	
tation				A 120 N 28
(h) By co-sharer against other	er co-shater	Whether	one for	
compensation for breach o			•••	A 115 N 1
(c) Fields given to defendant				
promise to pay surplus pro	ofit to plaintiff-	-Suit for	profit—	
Limitation				A 62 N 28
(d) Limitation—For suit not go		109		A 120 N 28
(e) On registered agreement—I				A 116 N 8
(f) Profits of business carried				
quently wound up-Limit				A 120 N 28
(g) Profits of immevable prope	rty wrongfully	received by	defen-	
dants				
(1) Applicability of Art. 1			,	A 109 N 2
(ii) Application for rents				
mortgage by insolve	nt is annulled by	2. rusoiveno		A 109 N 12
. —Limitation (m) Application for restit	ution Kamutat	on ·		A 109 N 17
(iv) Award of such profi	te - Subseque	nt annliest		A 103 N 11
ascertanment	ts — Duoseque	are approar	IGH TOL	
(a) Claim for ascer	tainment, whet	her limited	to pro-	
	ree years befor			
tion	٠.			A 109 N 11
(b) Limitation—St	arting point			A 109 N 11
(v) "Belonging to the pla				A 109 N 15
(vi) By cestus que trust i	against trustee o	de son tort-	$-L_{1mi}$	
tation	٠.			A 109 N 5
(vit) By co-owner against				
can recover whole	pronts without	making of		4 100 37 15
owners parties (vin) By co-owner for his	have of suchts	Limitatio		A 109 N 15 A 109 N 3
(viii) D) co-owner for his	mare or Litouts-		n	11 103 11 3

Profits — Suit for — Profits of immovable property wrongfully received by defendants—(Contd.)

dants-(Contd.)	
(1x) By co-sharer for share of his profits accruing after	
eessation of eo-ownership-Limitation	A 109 N 3
(x) By co-sharor for share of his profits accruing after	
deerco for partition and before its execution	A 109 N 3
(xi) By co-sharer of joint Mitakshara family oxcluded from	
enjoyment of family property for account of profits	
received by members in possession, whether suit for	
profits wrongfully received	A 109 N 4
(xii) By losses dispossessed by lessor-Limitation	A 109 N 7
(xiii) By momber of Hindu family governed by Dayabhaga	
law for share of profits—Limitation	A 109 N 4
(xiv) By member of Hindu family governed by Mitakshara	
law for profits of undivided property after division in	
status—Limitation	A 109 N 4
(xv) By mioor after attaining majority—Limitation—(S. S.	
whether applies) where minor is one of several per-	
sons entitled to suo for mesno profits and discharge	
can be given without concurrence of such minor	A 109 N 9
(xvi) By mortgageo dispossessed by mortgagor—Limitation:	A 109 N G
(xvii) By mortgagor against usufructuary mortgages for col-	
lections received by the latter after satisfaction of	
	A 109 N 6
mortgage—Limitation (xviii) By mortgageo for col-	21 200 21 0
lections received by the latter where mortgagor's	
rights are put an end to before regaining possession —	
	A 109 N G
(xix) By vendor for profits up to date of sale - Limitation :	A 109 N 15
(xx) Distinguished from suit for damages to personal pro-	
Derty	A 109 N 13
(xxi) For mesne profits—When governed by Art. 109	A 109 N 3
(xxi) For rent received by co-sharer where co-sharer is also	
the tenant-Limitation	A 109 N 13
(xxiii) Limitation	· A 109 N 16
(xxiv) Limitation, starting point, in case of crops	A 109 N 16
(xxv) Plaintiff's disability to maintain suit at time of receipt	
of profits owing to existence of decree against him,	
offect of	A 109 N 16
(xxvi) Profits received by alience of father where alienation	
is set aside at the instance of his son except as to	
sharo of father—Limitation	A 109 N 3
(xxvii) Profits received by alience of Hindu widow where cer-	
tain portion of alienation is set asido—Limitation	A 109 N 3
(xxxiii) Profits received by defendant during possession under	
decree or order of Court subsequently set aside-	
Maintainability of suit	A 100 N 3
(xxix) Profits referred to, in Art. 109, whether identical with	
mesne profits	A 100 N 2
(xxx) Suit for damages for trespass -Whether suit for profits	10
wrongfully received	A 109 N 13
(xxxi) Suit for profits received by defendant during posses-	
sion acquired prior to decree for possession, whether	A 100 N 8
suit for profits wrongfully received	A TUS A O

OLINERAL INDIA		001
Profits — Sult for — Profits of immovable property wrongfully defendants—(Contd.)	received	bу
(xxxii) Suit for profits received by defendant during possession under decree or order of Court subsequently set aside, whether suit for profits wrongfully received. (xxxiii) Suit for profits received by mortgagee where mortgage	A 109	n s
is void or invalid against plannilf, whether suit for profits wrongfully received—Illustrative cases (xxxiv) Suit for profits wrongfully received by defendant and	A 109	N A
red hy r Pre-	A 109	N 2
	A 109 N	14
Wrongfully received (a) Meaning of (b) Profits received by alience of father where alienation is set aside at the instance of his sons except as to share of father,	A 109 N	2a
whether mosts wrongfully received (c) Profits received by ahence of Hindu widow after her death,	A 109 1	N 3
where altenation is set aside, whether wrongful profits (d) Profits received by ahenee of Hindu widow where certain portion of altenation is set aside by reversioners, after	A 109 N	23
widow's death—Profits of the whole property, whether wrongful	A 109 1	N 3
appeal or in separate suit, whether wrongfully received (f) Profits received by heense after expiry of period of license,	A 109 N	21
whether wrougful profits (g) Profits received by mortgagee where mortgage is void or in.	A 109 N	2a
valid against mortgagor, whether wrongful profits	A 109 I	N 6
(h) Profits received by person possessing under decree subsequently set aside, whether wrongful	A 109 I	N 8
(i) Profits received by purchaser in the event of the sale being set aside, whether profits wrongfully received. (j) Profits received by trespasser, whether wrongful profits	A 109 N A 109 N	
Profits a prendre		
——In gross, what is	S 2 Cl 5 N	12
Promise		
-Breach of Compensation for See under Compensation. Promisor		
Joint promisor_Suit by, for contribution_See under Contribution.		
Promissory note		
By Hindu, bearing native date only and payable four months after date—Limitation for suit on note bow to be computed Debt due on—Surety for—Suit against—Limitation	8 A 73 1	25 1 2
Debt incurred on, by father—Son's liability to pay such debt—Suit to enforce—Limitation	A 120 N	
— Endorser of —Suit against — Limitation	A 73 N	
liability in suit on original cause of action	S 19 N	fi£

Promissory note-(Contd.)

Promissory note—(Conta.)	
- Given in lieu of earlier debt-Debtor giving receipt acknowledging	
receipt of sum sama day-Acknowledgment, if can be relied on in	
suit on original cause of action, such suit being brought on account	
of promissory note being manforceable	S 19 N 29
—Giving of promissory note — Whether constitutes payment within	·
S. 20	S 20 N 11
	D 20 11 11
Government promissory note-Interest on Recovery of Suit	A 120 N 2
against holder—Limitation	
	A 69 N 2
—Meaning of	S 2 Cl 9
(a) Government war bond payabla at a particular place, if pro-	
missory note	S 2 Cl 9 N 1
-New promissory note executed in lieu of earlier one-Endorsement	
on back of earlier note to the effect that in its stead new note	
was executed - Suit on old note, new note not being sufficiently	
stamped—Endorsement, if can be relied on as acknowledgment	
4 1	S 19 N 29
	A 69 N 2
-Not payable on damand-When falls dua	A 05 M =
— Payabla a stated numbar of days or months after date or sight —	1 50 15 1
Moda of calculating maturity	A 72 N 1
——Payabla after demand—Meaning of	A 72 N 1
Payable after sight-Meaning of	A 72 N 1
"Payable at any tima within eix years on demand" - Suit on	
Limitation	A 120 N 17
—Payable at fixed time	
(a) Evidence of contract fixing period of payment, whether admis-	A 69 N 3
sible in cases where note is silent on the point	A 69
(h) Suit on—Limitation	Λ 05
(c) Where note fixes a data, evidence showing that terms of con-	A 69 N 3
tract are different, whether admissible	A 69 M
Payable at fixed time after dataStipulation as to period of pay-	
ment, whether must be ambedied in the note itself to constitute	
promissory nota payable at fixed time	A 69 N 3
promissory note payable at fixed time	
promissory nota payable at fixed time	72. A 72 N I
promissory nota payable at fixed time —Payable at fixed tima after demand—Snit on—Limitation—Starting point A	
promissory nota payable at fixed time —Payable at fixed tima after demand—Snit on—Limitation—Start- ing point	72, A 72 N 1 A 72
promissory nota payable at fixed time	72, A 72 N 1 A 72 A 80 N 1
promissory nota payable at fixed time —Payable at fixed tima after demand—Suit on _Limitation _Start- ung point A —Payable at fixed time after sight—Suit on _Limitation —Payable at specified period after date and at specified place — Suit on _Limitation	72, A 72 N 1 A 72
promissory nota payable at fixed time —Payable at fixed time after demand —Snit on —Limitation —Starting point —Payable at fixed time after sight—Suit on —Limitation —Payable at specified period after date and at specified place — Suit on —Limitation —Payable at two places —Whethar can be presented at either place	72, A 72 N 1 A 72 A 80 N 1
promissory nota payable at fixed time —Payable at fixed time after demand—Snit on—Limitation—Startung point A —Payable at fixed time after sight—Suit on—Limitation —Payable at fixed time after sight—suit on—Limitation —Payable at specified period after date and at specified place — Suit on—Limitation —Payable at two places—Whethar can be presanted at either place —Payable by instalment	72, A 72 N 1 A 72 A 80 N 1
promissory nota payable at fixed time —Payable at fixed time after demand —Sait on —Limitation —Starting point —Payable at fixed time after sight—Suit on —Limitation —Payable at specified period after date and at specified place — Suit on —Limitation —Payable at two places —Whethar can be presented at either place —Payable by instalment (a) Suit on	72, A 72 N 1 A 72 A 80 N 1 A 71 N 1
promissory nota payable at fixed time —Payable at fixed time after demand—Snit on—Limitation—Starting point A —Payable at fixed time after sight—Suit on—Limitation —Payable at fixed time after sight—sout on—Limitation —Payable at specified period after date and at specified place — Suit on—Limitation —Payable at two places—Whethar can be presanted at either place —Payable by instalment (a) Suit on (i) Limitation—Starting point A	72, A 72 N 1 A 72 A 80 N 1 A 71 N 1
promissory nota payable at fixed time —Payable at fixed time after demand—Suit on—Limitation—Startung point A —Payable at fixed time after sight—Suit on—Limitation —Payable at fixed time after sight—Suit on—Limitation —Payable at specified period after date and at specified place — Suit on—Limitation —Payable at two places—Whethar can be presanted at either place —Payable by instalment (a) Suit on (b) Limitation—Starting point A (l) Special and general provisions of limitation	72, A 72 N 1 A 72 A 80 N 1 A 71 N 1
promissory nota payable at fixed time —Payable at fixed time after demand—Snit on—Limitation—Starting point —Payable at fixed time after sight—Suit on—Limitation —Payable at specified period after date and at specified place — Suit on—Limitation —Payable at two places—Whethar can be presented at either place —Payable by instalment (a) Suit on (i) Limitation—Starting point (ii) Special and general provisions of limitation (iii) Where on default whole amount is payable on demand	72, A 72 N 1 A 72 A 80 N 1 A 71 N 1 74; A 74 N 2 A 75 N 2
promissory nota payable at fixed time —Payable at fixed time after demand—Snit on—Limitation—Startung point A —Payable at fixed time after sight—Suit on—Limitation —Payable at fixed time after sight—Suit on—Limitation —Payable at two places—Whether can be presented at either place —Suit on—Limitation —Payable by instalment (a) Suit on (b) Limitation—Starting point A (c) Special and general provisions of limitation (ii) Where on default whole amount is payable on demand —Limitation—Starting point	72, A 72 N 1 A 72 A 80 N 1 A 71 N 1
promissory nota payable at fixed time —Payable at fixed time after demand—Snit on—Limitation—Starting point —Payable at fixed time after sight—Suit on—Limitation —Payable at fixed time after sight—Suit on—Limitation —Payable at specified period after date and at specified place — Suit on—Limitation —Payable at two places—Whethar can be presented at either place —Payable by instalment (a) Suit on (i) Limitation—Starting point A (ii) Special and general provisions of limitation (iii) Where on default whole amount is payable on demand —Limitation—Starting point (iv) Where there is a default clause—Limitation	72, A 72 N 1 A 72 A 80 N 1 A 71 N 1 74; A 74 N 2 A 75 N 2
promissory nota payable at fixed time —Payable at fixed time after demand—Snit on—Limitation—Starting point A —Payable at fixed time after sight—Suit on—Limitation A —Payable at fixed time after sight—Suit on—Limitation —Payable at fixed time after date and at specified place — Suit on—Limitation —Payable at two places—Whethar can be presanted at either place —Payable by instalment (a) Suit on (i) Limitation—Starting point A (ii) Special and general provisions of limitation A (iii) Where on default whole amount is payable on demand	72, A 72 N 1 A 72 A 80 N 1 A 71 N 1 74; A 74 N 2 A 75 N 2 A 75 N 9 A 75 A 75 N 6
promissory nota payable at fixed time —Payable at fixed time after demand—Sait on—Limitation—Starting point —Payable at specified period after date and at specified place — Suit on—Limitation —Payable at specified period after date and at specified place — Suit on—Limitation —Payable at two places—Whethar can be presented at either place —Payable by instalment (a) Suit on (i) Limitation—Starting point (ii) Where on default whole amount is payable on demand —Limitation—Starting point (iv) Where there is a default clause—Limitation (v) Where there is a default clause but there has been no default—Limitation (v) Where there is a default clause but there has been no default—Limitation	72, A 72 N 1
promissory nota payable at fixed time —Payable at fixed time after demand—Snit on—Limitation—Starting point A —Payable at fixed time after sight—Suit on—Limitation A —Payable at fixed time after sight—Suit on—Limitation —Payable at specified period after date and at specified place — Suit on—Limitation —Payable at two places—Whethar can be presanted at either place —Payable by instalment (a) Suit on (i) Limitation—Starting point A (ii) Special and general provisions of limitation (iii) Where on default whole amount is payable on demand —Limitation—Starting point (iv) Where there is a default clause—Limitation (v) Wice there is a default clause but there has been no default—Limitation (vi) Where there is no default clause—Limitation (vi) Where there is no default clause—Limitation	72, A 72 N 1
promissory nota payable at fixed time —Payable at fixed time after demand—Sait on—Limitation—Starting point —Payable at specified period after date and at specified place — Suit on—Limitation —Payable at specified period after date and at specified place — Suit on—Limitation —Payable at two places—Whethar can be presented at either place —Payable by instalment (a) Suit on (i) Especial and general provisions of limitation (ii) Where on default whole amount is payable on demand —Limitation—Starting point (iv) Where there is a default clause—Limitation (vi) Where there is a default clause—Limitation (vi) Where there is a default clause—Limitation (vi) Where there is no default clause—Limitation (vi) Where there is no default clause—Limitation (vi) Where there is no default clause—Limitation	72, A 72 N 1 A 72 A 80 N 1 A 71 N 1 74; A 74 N 2 A 75 N 2 A 75 N 9 A 75 A 75 N 6
promissory nota payable at fixed time —Payable at fixed time after demand—Snit on—Limitation—Starting point A —Payable at fixed time after sight—Suit on—Limitation A —Payable at fixed time after sight—Suit on—Limitation —Payable at specified period after date and at specified place — Suit on—Limitation —Payable at two places—Whethar can be presanted at either place —Payable by instalment (a) Suit on (i) Limitation—Starting point A (ii) Special and general provisions of limitation (iii) Where on default whole amount is payable on demand —Limitation—Starting point (iv) Where there is a default clause—Limitation (v) Wice there is a default clause but there has been no default—Limitation (vi) Where there is no default clause—Limitation (vi) Where there is no default clause—Limitation	72, A 72 N 1

Promissory note—Payable by instalment—With a default clause, suit on — (Contd.) (i) Burden of proof as to waiver of default clause which

(ii) Burden of proof as to waiver of default clause which	
postpones starting point to fresh default in respect of	
which there is no waiver	A 75 N 16
(iii) Default clause, if penalty within Contract Act, S. 74	A 75 N 19
(1v) Default, what amounts to within Art. 75	A 75 N 6
(v) Demand of overdue instalment, whether waiver of de-	11 10 11 0
fault clause an as to start time running from fresh	
	A 75 N 12
(vi) Essentials of applicability of Art. 75	A 75 N 2
	5, A 75 N 10
(viii) Part payment of instalment or payment generally to-	
wards account, whether waiver of default clause so as	
to start time running from fresh default in respect	
of which there is no waiver	A 75 N 13
(iv) Provision of, in Punjah Loans Limitation Act .	A 75 N 22
(Verbal contract under which money is payable by	
instalments-Limitation	A 75 N 3
(A) Waiver of default clause, whether can be gathered from	
nleadings	A 75 N 17
(711) Waiver of one default, whether hars suit on second	11 10 11 11
	A 75 N 18
default	A 10 H 10
(xin) What constitutes waiver of default so as to start time	
running from fresh default in respect ni which there	
is no walver	A 75 N 11
(xiv) Where default has been waived and fresh default has	
not occurred—Limitation	A 75 N 7
(5v) Where there is not only a default clause but where the	
promisee also has option to demand payment -	
Limitation-Starting point-English law	A 75 N 8
yable on demand	
	1 50 37 0
(a) Meaning of	A 73 N 3
(h) Suit on	
(1) Art. 73 and Art. 70, distinguished	A 73 N 3
(ii) Computation of time—Day on which note is executed,	
whether excluded	A 73 N 5
(iii) Limitation—Starting point	A 73 N 1.
(1y) Where application to bank for loan mentions six months	
as period of payment and defendant subsequently exe-	
cutes promissory note payable un demandLimita-	
	A 73 N 4
tion	W 19 W #
(v) Where note is accompanied by writing restraining or	
	4, A 80 N 1
(vi) Where note is not accompanied by any writing res-	
training or postponing right to sue	A 73
(vii) Where subsequent to date of pro-note payable on demand	
there is agreement to make no demand till certain	
period_Limitation	A 73 N 4
(vin) Where there is mere expectation that demand will not	
be made for certain period—Limitation	A 73 N 4
(ix) Where there is oral agreement to postpone date of pay-	
ment-Limitation	A 73 N 4

Promissory note-(Contd.)

-Given in lieu of earlier debt-Debtor giving receipt acknowledging

	S 19 N 29
Giving of promissory note whether constitutes payment within	
S. 20	S 20 N 11
Government promissory note-Interest on - Recovery of - Suit	4 -00 37 0
against belder-Limitation	A 120 N 2 A 69 N 2
Matnrity of Method of calculating	S 2 Ci 9
	5 2 01 9
(a) Government war bond payable at a particular place, if promissory note	S 2 Cl 9 N 1
New premissery note executed in lieu of earlier one—Endorsement	52010112
on back of earlier note to the effect that in its stead new note	
was executed — Suit on old note, new note not being sufficiently	
stamped-Endorsement, if can be relied on as acknowledgment	
to save limitation	S 19 N 29
-Not payable on demand-When falls due	A 69 N 2
-Payable a stated number of days or months after date or sight -	
Mode of calculating maturity	A 72 N 1
Payable after demand-Meaning of	A 72 N I
- Payable after sight-Meaning of	A 72 N 1
"Payable at any time within six years on demand" - Suit on -	
Limitation	A 120 N 17
-Payable at fixed time	
(a) Evidence of contract fixing period of payment, whether admis-	
sible in cases where note is silent on the point	A 69 N 3
(b) Suit on—Limitation	A 69
(c) Where note fixes a date, evidence showing that terms of con-	A 69 N 3
tract are different, whether admissible	N 60 I
-Payable at fixed time after date-Stipulation as to period of pay-	
ment, whether must be embodied in the note itself to constitute	A 69 N 3
promissory note payable at fixed time	1 00 11 0
ing point A	72; A 72 N 1
-Payable at fixed time after sight-Suit on-Limitation	A 72
-Payable at specified period ofter date and at specified place - Suit	
en-Limitatien	A 80 N 1
-Payable at two places-Whether can be presented at either place	A 71 N 1
Payable by instalment	
(a) Suit on	
	74; A 74 N 2
(ii) Special and general provisions of limitation	A 75 N 2
(ui) Where on default whole amount is payable on demand	A 75 N 9
-Limitation-Starting point (iv) Where there is a default clause-Limitation	A 75
(iv) Where there is a default clause—Limitation (v) Where there is a default clause but there has been no	
default—Limitation	A 75 N 6
(vi) Where there is no default clause-Limitation	A 75 N 5
(b) What is	A 75 N 4
(c) With n default clause—Suit on	
(i) Art. 75 and S. 20	A 75 N 23

Promissory note—Payable by instalment—With a default clause, suit on — (Contd.)

Contd.)								
(1i)	Burden of proo	f as to waive	er of defaul	t clause wi	nich			
	postpones star	ting point to	fiesh defar	alt in respec	t of			
	which there is			•••		Α'	75 N	116
(ıii)	Default clause,	if penalty v	vithin Conf	ract Act. S	. 74	A '	75 N	119
(iv)	Default, what a	mounts to w	ithin Art. 7	5		Α	75	N 6
(v)	Demand of over	due instalme	ent, whethe	r waiver of	đe.			
	fault clause s	o as to stari	time run	ating from f	resh			
	default in resp	ect of which	there is no	waiver		A 5	75 N	1 12
(vi)	Essentials of a				•••	A	75	N 2
(vii)	Limitation-St	arting point	•••	•	A 75.	A 7	/5 N	10
(viii	Part payment	of instalment	or paymen	at generally	to.			
	wards account	t, whether w	river of defa	ult clause s	0 as			
	to start time	running from	n fresh def	ault in resp	ect			
	of which ther			•••			75 N	
(14)	Provision of, m	Punjab Loai	as Limitatio	on Act		A 7	5 N	22
(z)	Verbal contrac	t under wh	ich money	is payable	by			
	ınstalments-	Limitation				A	75	N 3
(21)	Waiver of defai	rlt clause, wh	ether can b	e gathered fi	rom			
	pleadings		•••	••		A 7	5 N	17
(xn)	Waiver of one	delault, wh	ether bars	suit on sec				
	default	***				A 7	5 N	18
(xiii)	What constitut							
	running from		in respect	of which th				
	is no waiver		•••	•••		A 7	5 N	11
(viv)	Where default			esh default	has			
	not occurred-			• •	• •	Α	75	N 7
(44)	Where there is	not only a de	efault clause	but where	tlie			
	promisee also	has option	ı to demai	nd payment	-			
	Limitation—	Starting point	-English	342	•••	A	75 1	И 8
—Payable on	demand							
(a) Mear	ing of			***	•••	A	73 1	NB
(b) Suit								
(1	Art. 73 and Ar	t. 70, distingi	uished			A	73 1	N 3
(ii	Computation of	time-Day	on which no	te is execul	ed.			
•	whether exch	adeđ	٠.			A	73 1	N 5
(ıiı) Limitation—Si	tarting point			***	A	73 1	N 1.
(15	Where applicat	tion to bank fo	r loan ment	ons six mor	ths			
•	as period of p							
	cutes promiss	ory note pay	able on de	mand—Lim	ıta.			
	tion	•••			•••	A	73 1	N 4
v)	Where note is		i hy writin;					
	postponing ri			. A	73 N 4	A	80 1	N 1
(r)	i) Where note r			ny writing :	res-			
	training or po				٠.		A	73
(vi:	ı) Where subsequ							
	there is agre			and till cer	tain		F0.1	
, .	period-Lim					A	73 1	N 4
(711	Where there r				HOL		F0.1	
	be made for ce				•	A	73 1	11 1
(iz	() Where there is		ent to postp	-	•		·	
	ment_Limit	ation	• •	•••	•••	A	73 1	N 4

General Index 3004 Promissory note—Payable on demand—(Contd.) (c) What is (1) Promissory note on which no time is 6xed, whether A 73 N 3 promissory note payable on demand (ii) Promissory note payable at sight, whether promissory note payable on demand ... A 73 N 3 A 69 N 1 _Suit based on _Limitation ... -Suit by executant for declaration that note was discharged and unenforceable-Period of pendency of snit-Whether can be deducted in computing limitation for suit on pro-note by the S 14 N 10 -Suit by promiseo against one of the legal representatives of oxecutant for money decree against assets of executant in his hands -Defendant in possession of only a portion of the assets-Persons in possession of other portions of assets impleaded after limitation S 22 N 11 -Suit as against them, if barred --Suit on (a) Against Hindu son to enforce his Hindu law liability to pay A 73 N 2 his father's promissory note debt-Limitation ••• A 80 N 1 (b) Illustrative cases governed by Art. 80 ... A 69 N 2 (e) Limitation-Starting point (d) Note given by maker to third person to be delivered to payee after happening of certain event-Limitation-Starting à 76: A 76 N 1 point A 80; A 80 N 1 (c) Residuary provision of limitation ... A 69 N 1 - Summary suit on Maintainability-Limitation Property ---Immovable property (a) Attachment of -See under Attachment. (b) Lease of -See under Lease. (c) Transfer of -See under Transfer. - Joint family property - Share in - Suit for - See under Joint family. A 80 N 1 --- Lien against-Suit for enforcement of-Limitation ... --- Mortgaged property-Sale proceeds of-Suit for recovery of-A 120 N 12 Limitation ••• ---- Moveable property--See under Moveable property. --- Of deceased person-Share of-Suit for-By person claiming as A 120 N 12 heir-Limitation --- Of intestate-- Share of-Suit for-See under Intestate. ----Perversion of, to other purposes (a) By person who, having right to use property for specific purposes, perverts it to other purposes-Illustrative cases of A 32 N 4 such perversion (b) Suit as to (i) Against person who having right to use property for specific purposes, perverts it to other purposes A 32 N 5 (a) Limitation—Startica point (b) "Right to u-e property for specific purposes"-

What is ...

(c) Whether limit at on will avail only if plaintiff is

also ertitle I to relief in equity ...

A 32 N 2

A 32 N 7

GENERAL INDEX	3005
Property-Perversion of, to other purposes-Suit as to-(Contd)	
(ii) Applicability of Art. 32, whether depends on kind of	
relicf asked for in such suits	A 32 N 1
(iii) Based upon perversion as to right of easement—Limitation	A 32 N 2
(iv) By co-sharer in respect of perversion by other sharer of joint property which is intended to be used for	1, 02 1, 2
specific purposes—Limitation	A 32 N 3
(v) In respect of conversion by defendant of public grave- yard into grove—Limitation	A 32 N 2
(vi) In respect of defendants' erecting "tharas" on public	A 32 N 2
road in abadi village—Limitation	A 32 N 2
(vii) Kind of relief that may be asked for in such suit, whe-	
ther necessary consideration for applicability of	A 32 N 1
(viii) Limitation	A 32
(ix) Not based on perversion as cause of action-Limita.	
tion	A 32 N 1
(x) When perversion first becomes known to person injured thereby—Burden of proof as to knowledge of plaintiff	
where perversion took place two years before suit	A 32 N 6
(vi) Where defendant has no right at all to property or to	
make any use of it—Limitation	A 32 N 2
(xii) Where defendant has only hoense to use property for certain purposes—Limitation	A 32 N 2
	11 02 11 2
(a) What is	A 47 N 7
(b) Whether one for compensation	A 36 N 3
Prosecution	
	A 19 N 1
-Meaning of, within Art 23	A 23 N 4
—-When and how terminates	A 23 N 5
—When commences	A 23 N 4
Provincial Insolvency Act	
-Application under-Limitation	A 181 N 22
S. 22—Application under—Exclusion of time under S. 12, Limitation Act, if can be made	S 12 N 5
S. 53_Period of two years referred to in — Whether 'period of	2 12 14 3
limitation prescribed'	S 14 N 9
S. 68—Application under	G 00 17 0
(a) Section 4 of Limitation Act applies	S 29 N 3 S 22 N 4a
Section 78	0 22 24 23
(a) Appeals and applications under—Delay in filing—Excuse of	S 5 N 4
(b) Exclusion of period of pendency of insolvency proceedings	S 15 N 8
—Section 78, sub-s 2—Period in computing which time is deducted under—Whether perfod prescribed within \$ 19, Limitation Act	C 10 17 10
Whether a special law	S 19 N 12 S 29 N 6
Provincial Small Cause Court	0 20 11 0
Powers of Whether has power to order attachment before judg.	
ment of immovable property ::	A 11 N 19

Public	
-Adverse possession by or against-See Advers	e possession.
Public Demands Recovery Act	•
-Sile under-Setting aside-Suit for-On gro	und at toud of our.
chaser—Limitation	1 95 N 10
Punjab Courts Act	
-Section 40 (2) -Proceedings under-Legal di	is ability, extension on
ground of—If available	S 6 N 20 F N 2
Punjab Customary Law	
- Alienation - Suit by reversioner - Next rever	sioner under disability
at time of alienation - Right to extension of	
when remote reversioners are not under dis	ability S 6 N 18
-Alienation of ancestral property-Suit by	
alienation - Extension of time, if available	S 6 N 18
-Reversioner-Suit to set aside alienation by	
of one of the reversioners—Liffect of, on lin	nitation for suit BY N 218
Punjab Limitation (Custom) Act	
When applies to suit by reversioner to de	clare that alienation
made by female is not binding on reversion-	-Limitation A 195 N 17
Purchasa	
- Toint parchase Money paid for Recovery	of-Suit for-Limi-
tation	189 % 3
Purchase morey - Refund of, suit for -In ent	
of sale for refund of purchase money in re	
extent of land sold—Limitation	1. 1. 1. 65 % 1
Purchaser	
At execution sale-Merning of-Within Art.	
At sale in execution of decree Who is De	
whether purchaser at sale in execution of d	
	1451 1/3
Who is	sor within Art. 138 A 188 N 5
(a) Assignce of purchaser, whether purcha (b) Within Art. 133	1 193 4 3
• •	1233.70
Purdanashin lady	S5 N 25
Appeal by, delay in filing-Delay, if can be e	reused 55.725
Rallway	
- Snit against Railway Company	
(a) By consigner—For surplus sale proceed	ds of goods sold under
Railways Act. S. 56-Limitation	1 62 % 31
(b) Defendants described as agents of the c	ompany instead of the
company-Amendment by giving co	
amounts to addition of new party wi	
Radway in respect of land belonging to S	teta Radway - Limi.
tation	119 % 3
-Sait for compersation by consignor of good	
rendelivery of goods-letter written b	y Railway Company
informing consigner that goods are lying at	a particular place and
consegnor's instructions are awaited—Le	
acknowledgment of liability	515.415

Railways Act ——Section 77—Notice under, of claims to refunds of overcharges and	
compensation for losses	A 30 N 6-
Section 18-Application under-Delay in filing-Excuse of	S 5 N 4
Rangoon Small Cause Court Rules	
—Rule 101—Art. 159, Limitation Act—Applicability of, to application for leave to appear and defend in summary suit under Civil	
P. C summary suit under Civil	A 159 N 4
Receiver	
Appointed by Court	
(a) Of disputed property—Whether agent of successful party (b) When can make acknowledgment on behalf of party of whose	A 89 N 7
property he is receiver	S 19 N 52
(c) Whether trustee	S 10 N 9
:	S 19 N 52:
Appointment of	
(a) Suit for—By reversioner against limited owner—Limitation: (b) To estate of person under disability—Suit by Receiver—	A 120 N 34
Right to extension of time, if available	8 6 N 39
Authority to acknowledge debts is derived from order of Court	S 19 N 50
 Defendant appointed by private arrangement between parties to collect income of joint property to be handed over to successful 	
party in the end—Trust, if created	S 10 N 11
Of assets of firm with power to pay debts due by firm-Whether	
of limitation	S 19 N 52
_	
A 172, A 172 N	1, A 172 N 3 A 172 N 2
(iii) Time, whether extended by virtue of S 5, Lim. Act	A 172 N 3
(b) For setting aside dismissal of suit	1 1 1 1 1 1 1 1 1 1
(1) Limitation—Starting point A 172, A 172 N (11) Provision for	A 172 N 3
(iii) Time, whether extended by virtue of S 5, Lim. Act	A 172 N 3
	S 20 N 22
(a) Against heirs to estate for reimbursement of cost incurred in	
filing suit on behalf of estate—Limitation	A 82 N 2
(b) To recover money spent for estate—Limitation Recognizance	A 61 N 14
—Meaning of	A 122 N 5
-What is-Bond executed under Criminal P. C., whether recognizance	A 122 N 5
Whether judgment, within meaning of Art. 122	A 122 N.5
Record of Rights	
—Entry in (a) Correction of—Suit for	
(1) Cause of action, when arises	A 120 N 50
(ii) Limitation	A 120 N 50

Record of Rights-Entry in-C	orrection o	f. suit for-	-(Contd.)		
(iii) Suit for eject me				nt	
at will-Whethe					
of rights	•••	•••			A 120 N 50
(b) Declaration as to-Sui	t for				
(i) By person as					
Punjab Land R	ovenuo Aci	t — Limitat	ion — Starti	ng	
point	•••	•••	•••		A 120 N 50
(ii) Cause of action.	when arise	s	•••	•••	A 120 N 50
(iii) Limitation	•••	···			A 120 N 50
(c) Incorrectness of -Suit	for declarat	tion-Limit	ation Whe	ero	
Record of Rights is p	repared und	lor Chota N	agpur Tenar		A 120 N 50
Act			 1 have		A 120 M 50
(d) Person against whom to sue for declaration					
Bengal Tenancy Act.	n as to inc	orrectness o	or enery una		A 120 N 50
(e) Person aggrieved by—	Somedu of a	 mler Punish	Land Rever		11 120 11 00
Act, S, 45	tomeay or, t	inder z disjai.	23,6110 210101		A 120 N 50
(f) Plaintiff dissatisfied w	ith — Snit 1	or declaration	n of plainti		
right—Suit under M	dras Estate	a Land Act.	S. 179-Li	ni.	
tation-Starting poin		***	***	•••	A 120 N 50
(g) Whether final	•••	•••	•••		A 14 N 2
Whether creates or extingui	shes rights	•••	•••	•••	A 131 N 7
Redemption	-				
See under Mortgage.			•••		
Refund	•••	•••	•••		
-Application for, under C. P.	C. S. 47 fo	r refund of n	iones recove	red	
in execution by decree-he	lder in oxec	ss of his due	s-Limitatio	n:	A 181 N 10
-Of assets wrongly paid to d					
for-Limitation	•••	474	***		V 03 N 50
Of purchase money, applica	tion for und	or C. P. C., (O. 21 R. 93—	By	
auction purchaser—Limi	tation—Star	rting point	•••	•••	A 181 N 11
Registered					
Meaning of	•••	***	•••	• • •	A 116 N 5
-Registered contract-See un	ider: Contr	act-Registe	red contract.		
Registration Act		-			
-Section 60-Provisions of		•••			A 10 N II
-Section 77-Suit under -	Legal disali	ilty, extensio	on on eround	of	
-If available		•••	***	SG	N 20 F N 2
Whether special law	•••		•••	•••	S 29 N G
Whether special law within	S. 29	•••		•••	S 29 N G
Rellef					
Application for same relief	-Meaning o	f—Illustrati	ons	•••	S 14 N 19
Religious endowments	-				
See under Endowments.					
Remainder					
-Whether necessarity depe-	rdept on life	cetate	•••	•••	A 140 N 4
Remainderman			•••	***	
- Definition of	•••				A 110 N 3
-Possession of ore remaind	ctrran_Wi	eller vocce	sion on behal		
all	***		-ion on benui	•••	A 140 N 2

Lim. 189

GENERAL INDEX	3009
Remainderman—(Contd.)	
Suit by	
(a) For possession against, representatives of life tenants con-	
tinuing in possession—Limitation	A 140 N 2
(b) For possession of immovable property	
(1) Alleging that instrument under which defendant is	
bolding property is not binding on plaintiff-Limita-	
tion	A 140 N 7
(ii) Based on cause of action which has already accrued	
to person from whom remainderman derived his title	
—Limitation	A 140 N 2
(iii) By other remaindermen where one remainderman	
has obtained possession and has subsequently lost it-	
Limitation	A 140 N 2
(iv) By successor of remainderman—Limitation	A 140 N 6
(v) Cause of action on which such suit is based, in whose	
favour must arise	A 140 N 2
(vi) Challenging adoption under which defendant claims to	
he in possession—Limitation	A 140 N 7
(vii) Limitation—Starting point A 140, A 140 N	2; A 140 N 8
(viii) Where remainderman had obtained possession but	
subsequently lost at—Limitation	A 140 N 2
Remand	
New plea as to limitation-Point not raised before Appellate Court,	
	N 17 F N 15
Rent	
Arrears of	
(a) Meaning of	A 110 N 11
(h) Patni taluq sold for—Incumbrance in — Avoidance of — Suit	
for—See under Patm taluq	
(c) Suit for .	
(1) Against surety for lessee - Limitation - Starting	
point	A 110 N 10
(ii) Against surety who has joined in execution of kabu-	1 110 27 10
livat and the same has been registered—Limitation	A 110 N 10
(iii) Against tenant holding over - Claim of landlord,	A 110 NT 4
when one for rent (iv) Against tenant holding over after expiry of registered	A 110 N 4
lease deed for rent for period of holding over Limi-	
tation	A 116 N B
(v) By co-sharer for contribution for share of rents	23 110 11 6
received by another co-sharer Whether suit for	
arrears of rent	A 110 N 3
(vi) By landlord for rent against tenant where expired	** ==0 1. 0
lease is renewed by acceptance of rent-Limitation .	A 110 N 4
(vii) By lessor to recover rent from assignee of lessee-	
Limitation	A 110 N 5
(viii) By minor after attaining majority — S. 6, Limitation	
Act, whether applies	A 110 N 13
(ix) By minor after attaining majority—S. 6, Limitation	
Act, whether applies where special enactment pres-	
cribes special period of limitation	A 110 N 13
(x) By minor who is co-owner of property with an adult	4 110 37
who can give valid discharge for rent-Limitation	A 110 N 13

3010		GENERAL	INDEX				
Dant Armenna	of-Suit for-	(Contd.)					
(vi)	For amount pay	mble not to l	andlord but	to third no	reon.		
122	whether suit		***			A 110	N 2
(iix)	For arrears of 1	ent realized	from tenant	by person	not		٠,
	entitled to it-	_Whother su	nit for arread	rs of rent	•••	A 110	И3
(xiii)	For damages fo			inst person	not		
/t`	tenant of plain For ront before			ion	•••	A 110 A 110	
) For rent due u				•••	A 110	14 0
/~.	(a) Applicabi					A 116	N 1
	(b) Limitatio		•••	•••	•••	A 116	N 8
(xví	For rent due u						
	lord but not				for	A 110	NE
(mii	ront due unde For rent due u				···	V 110	110
(****	Limitation	antici registe				A 116	N 8
(xviti	Lease by usni						
	Mortgage rede				agor		N 17
1.00	for rent from	lessee, whet	her maintair	able		A 107 A 110 h	
1,0				plicabl		V IIO I	
,				pitosta	• •••	A 181	N 3
(xxí)	Mortgaged prop						
	fructuary mo						
	charge lease a						
	years—Mortga hy mortgagee						
	years - Subs						
	Limitation	•••		•••	•••	Λ 110	
	Rent due under					A 110	N &
(xxiii	Right of land						
	deduct arroars able by him						
	affected by li						
	of rent	•••	•••	•••	•	A 110	ИВ
(xxiv	Whore local or			special po	riod	A 110	A TA
(377	of limitation f Where provinci			atularych	···	A 110 .	., .
(10.1)	over tenuro of				***	A 110	NG
(xxv)	Whether time		l by applies	tion of S.	19,		
A	Limitation Ac	et	•••	•••		A 110 N	12
of rent h	t of—Right of— tenant where l:	weetner bar	red by mere	relationahi	ent of		
landlord	and tenant exists	i	mented ma		, 01	A 130 I	11
Commutat	ion of-Setting			ager of Hi	nđu		
	Limitation	•••	•••		•-•	A 120 1	N 4
	at rent and unde						
Limitatio	gistered mainter	sauce deed to	o transicion	- Suit 10	· /	116 N	24
Non-paym	ent of				,	_	
(a) By t							
(1	Whether bars I land is not rer						
	tenant exists		_	•••	•••	A 130 1	1

Rent_Non.payment of_By tenant_(Contd.)	
(11) Whether makes possession of tenant during tenancy	
adverse to landlord	A 139 N 12
(b) By tenants for 12 years—Effect of	1 110 17 44
-Recovery of Suit for - By landlord-Whether maintainable if	110 1, 11
suit for possession by landlord is barred under Art. 139	A 139 N 11
Rent free land	
(a) Assessment of—Suit for—Limitation	A 130
(b) Assessment or resumption of—Suit for	
(1) Assessment of land liable to be assessed—Limitation:	A 130 N 1
(n) Bar under Art. 130—Effect nf	A 130 N 5
(iii) By Government for resumption or assessment—Limi-	
tation	A 130 N 7
(1v) Decree declaring certain lands liable to resumption and	
assessment in prior suit between parties, whether	
gives new starting point for subsequent suit for actual	A 130 N 2
	2; A 130 N 4
(v) Limitation—Starting point A 130 N (vi) Mere recognition of plaintiff's right to resumption	2, A 130 N 4
contained in wallbinliurz, whether gives plaintiff new	
starting point	A 180 N 2
(vii) Succession of plaintiff to person in whose favour cause	00 1. 0
of action for resumption or assessment has arisen,	
whether gives new starting point to plaintiff	A 130 N 2
(viii) Whether one for possession within S. 28, Limitation	
Act	A 130 N 5
(c) Resumption of -Suit for Limitation -Starting point	A 130 N 3
—Suit for	
(a) Against all defendants on muchilika jointly executed by them	
—Suit for rent against each defendant under separate con-	
tract by each—Whether on same cause of action for pur-	S 14 N 18
(1) T2	A9N1
(c) Under Bengal Tenancy Act—Limitation	A 132 N 2
(d) Under Berar Alienated Villages Tenancy Law-Limitation;	A 132 N 2
What is	
(a) Adjustment between lessor and lessee fixing certain amount	
due for rent and lessee undortaking to pay it to superior	
proprietor of lessor—Whether rent	A 110 N 2
(b) Amount due by co-tenant as contribution to other co-tenant	
in respect of rent of landlord—Amount, whether rent	A 110 N 2
(c) Examples	A 110 N 2
— When hecomes arrear	A 110 N 11
	8 22 N 5
——Added party already constructively party to snit—S. 22 if applies: Resoission	0 22 N 0
Of contract-See under Contract.	
-Of leave to sue-Application for-Limitation	A 181 N 14
Recidne	
—Bequeathed by testator	
(a) Share of — Residuary share, whether legacy — Distinction	
between, under English law	A 123 N 9
(b) Suit for share	
(1) Against administrator—Limitation	A 123 N 2

Residue—Bequeathed by testator—Suit for share—(Contd.)	
(ii) Against executor	
(a) Executor, whether liable to render accounts for	
12 years before suit in suit by residuary legates	4 100 N F
to recover his share granted under the will	A 123 N 7
(b) Limitation	A 123 N 2
(iii) Against executor de son tort—Limitation	A 123 N 2
(iv) Against person to whom property has been bequeathed	1 100 37 0
with direction to pay certain legacy—Limitation	A 123 N 2
(v) By heir against person in possession who has taken out	1 100 N C
letters of administration—Limitation	A 123 N 6
(vi) By heir against person in wrongful possession—Limi-	
applicable to suit	A 123 N 6
estate	A 125 N 0
administration of	A 123 N 3
estate of deceased person	A 125 N 5
(viii) Legacy entailing administration of testator's estate-	A 123 N 3
Limitation	; A 123 N 11
	; A 125 H 11
(x) Recovery of moveshle property held for some inter-	A 123 N 5
vening time by Hindu widow-Limitation	
(xi) Time, whether extended by virtue of S. 6, Limitation	A 123 N 13
Aot	A 120 M 20
(xii) Whether must be against some person legally charged	A 193 N 2
with distributing ostate, for applicability of Art. 128:	A 123 N 10
(c) Suit for whole of residue bequeathed—Limitation	,A,120 11 20
Res judienta	
Applicability to decision of question of limitation	S3N19
	83N19
	5 15 N 24
—Applicability to decision of question of limitation Decision between same parties in prior execution application as to	S 15 N 24
— Applicability to decision of question of limitation — Decision between same parties in prior execution application as to	S 15 N 24 S 3 N 19
— Applicability to decision of question of limitation — Decision between same parties in prior execution application as to	S 15 N 24
— Applicability to decision of question of limitation Decision between same parties in prior execution application as to can can	S 15 N 24 S 3 N 19
— Applicability to decision of question of limitation Decision between same parties in prior execution application as to can Respondent	S 15 N 24 S 3 N 19
— Applicability to decision of question of limitation Decision between same parties in prior execution application as to be can can can can can can can can can can	S 15 N 24 S 3 N 19
— Applicability to decision of question of limitation — Decision between same parties in prior execution application as to consider the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the consta	S 15 N 24 S 3 N 19
— Applicability to decision of question of limitation Decision between same parties in prior execution application as to can Respondent — Legal representative of—See under Legal representative. Restitution Application for	S 15 N 24 S 3 N 19 S 3 N 19
— Applicability to decision of question of limitation — Decision between same parties in prior execution application as to be — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can — can	S 15 N 24 S 3 N 19
— Applicability to decision of question of limitation Decision between same parties in prior execution application as to can Respondent — Legal representative of—See under Legal representative. Restitution Application for (a) As result of order of Privy Council—Limitation (b) Under Givil P. C., S. 144	S 15 N 24 S 3 N 19 5 3 N 19
—Applicability to decision of question of limitation Decision between same parties in prior execution application as to can can can can can can can can can can	S 15 N 24 S 3 N 19 5 3 N 19
— Applicability to decision of question of limitation Decision between same parties in prior execution application as to can Can Legal representative of—See under Legal representative. Restitution Application for (a) As result of order of Privy Council—Limitation (b) Under Civil P. C., S. 144 (i) Application dismissed or properly disposed of—Second application out of time, if maintainable	S 15 N 24 S 3 N 19 S 8 N 19 A 183 N 4 A 181 N 7
— Applicability to decision of question of limitation — Decision between same parties in prior execution application as to — can — can — Legal representative of—See under Legal representative. Restitution — Application for (a) As result of order of Privy Council—Limitation (b) Under Civil P. C., S. 144 (i) Application dismissed or properly disposed of—Second application out of time, if maintainable (ii) Application stayed and consigned to record record	S 15 N 24 S 3 N 19 S 3 N 19 A 183 N 4 A 181 N 7
Application of order of Privy Council—Limitation (b) Under Civil P. C. S. 144 (i) Application dismissed or properly disposed of special or application at the state of time, if maintainable (ii) Application of time, if maintainable (iii) Application of the stayed and consigned to record record several application out of time, if maintainable (iii) Application stayed and consigned to record record several application out of time if barred.	S 15 N 24 S 3 N 19 S 8 N 19 A 183 N 4 A 181 N 7
— Applicability to decision of question of limitation — Decision between same parties in prior execution application as to — Con Respondent — Legal representative of—See under Legal representative. Restitution — Application for (a) As result of order of Privy Council—Limitation (b) Under Givil P. G., S. 144 (i) Application dismissed or properly disposed of—Second application out of time, if maintainable (ii) Application stayed and consigned to record record— Second application out of time if barred (iii) Limitation—Starting point	S 15 N 24 S 3 N 19 S 3 N 19 A 183 N 4 A 181 N 7
— Applicability to decision of question of limitation — Decision between same parties in prior execution application as to — can — can — Legal representative of—See under Legal representative. Restitution — Application for (a) As result of order of Privy Council—Limitation (b) Under Civil P. C., S. 144 (i) Application dismissed or properly disposed of—Second application stayed and consigned to record record — Second application out of time if maintainable (ii) Application stayed and consigned to record record — Second application out of time if barred (iii) Limitation—Starting point Bestitution of conjugal rights	S 15 N 24 S 3 N 19 S 3 N 19 A 183 N 4 A 181 N 7
— Applicability to decision of question of limitation Decision between same parties in prior execution application as to can Can Legal representative of—See under Legal representative. Restitution Application for (a) As result of order of Privy Council—Limitation (b) Under Civil P. C., S. 144 (i) Application dismissed or properly disposed of—Second application out of time, if maintainable (ii) Application stayed and consigned to record record—Second application out of time if barred (iii) Limitation—Starting point Restitution of conjugal rights Sait for	S 15 N 24 S 3 N 19 S 3 N 19 A 183 N 4 A 181 N 7 A 181 N 7
— Applicability to decision of question of limitation — Decision between same parties in prior execution application as to — Consider the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of the prior of	S 15 N 24 S 3 N 19 S 3 N 19 A 183 N 4 A 181 N 7
Applicability to decision of question of limitation Decision between same parties in prior execution application as to can Legal representative of—See under Legal representative. Restitution Application for (a) As result of order of Privy Council—Limitation (b) Under Civil P. C., S. 144 (i) Application dismissed or properly disposed of—Second application out of time, if maintainable (ii) Application stayed and consigned to record record—Second application out of time if barred (iii) Limitation—Starting point Restitution of conjugal rights Sait for (a) Applicability of S. 23 read with Art. 129 (b) Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active p	8 15 N 24 8 3 N 19 8 8 N 19 A 183 N 4 A 181 N 7 A 181 N 7 A 181 N 7
— Applicability to decision of question of limitation — Decision between same parties in prior execution application as to — Can — Can — Legal representative of—See under Legal representative. Restitution — Application for (a) As result of order of Privy Council—Limitation (b) Under Civil P. C., S. 144 (i) Application dismissed or properly disposed of—Second application out of time, if maintainable (ii) Application stayed and consigned to record record Second application out of time if barred (iii) Limitation—Starting point Bestitution of conjugal rights — Sait for (a) Applicability of S 23 read with Art. 129 (b) Cause of action————————————————————————————————————	8 15 N 24 8 3 N 19 8 8 N 19 A 183 N 4 A 181 N 7 A 181 N 7 A 181 N 7
Applicability to decision of question of limitation Decision between same parties in prior execution application as to can Legal representative of—See under Legal representative. Restitution Application for (a) As result of order of Privy Council—Limitation (b) Under Civil P. C., S. 144 (i) Application dismissed or properly disposed of—Second application out of time, if maintainable (ii) Application stayed and consigned to record record—Second application out of time if barred (iii) Limitation—Starting point Restitution of conjugal rights Sait for (a) Applicability of S. 23 read with Art. 129 (b) Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active. — recontinuing one with a S. 23, Limitative Parties of the Carse of active p	8 15 N 24 8 3 N 19 5 8 N 19 A 183 N 4 A 181 N 7 A 181 N 7 A 181 N 7

Restraint			
——And imprisonment, distinguished			A 19 N 1
	•••		A 19 N 1
Resumption			
	_See under	Rent.	
Revenue			
—Arrears of			
(a) And demand recoverable as such a	rrears_Dis	tinguished	. A 12 N 8
(b) Demands recoverable as arrears of			A 16 N 2, N 2a
(c) Estate sold for -Statutory obligat			
over surplus to owner-Enforce	ment of—Sn	it for-Limit	i.
tion	•••		A 62 N 7
(d) Property sold for			
(1) Interest of defaulter sold			
they were arrears of land	i revenue—	Difference be	
(u) Remedy of owner	•••		A 12 N 8
(e) Sale for			A12 NO
(1) Surplus sale proceeds on—S	Suit for_Ti	mitation	A 62 N 21
(11) Surplus sale proceeds paid	to wrone r	erson—Suit b	
real owner against payee-			A 62 N 21
(i) Sale of mortgaged property for-	Surplus sale	e proceeds pai	đ
to mortgagor - Suit by mort			0
money out of surplus sale proces			. A 62 N 21
(g) What are, under Madras Revenue		ct, Ss. 3 and	
-Assessed on land-Suit for-Limitation			A 120 N 29
- Mittadar's dues, whether revenue with			. A 99 N 2
——Revenue agent—Suit by, for costs—Lin——Revenue register—Namo in—Mutation			A 84 N 2
tation—Starting point	ot—Suit to		
Revenue Courts	•••		A 120 N 50
		t 101	. 4 100 37 10
	within mean		
Revenue sale law	•••	•••	814 N 13
			4 101 N C
Sale under_When becomes final and c	onciusive		A 121 N 6
Reversion			
	estate		. A 140 N 4
Reversioner			
Canse of action accruing in the lifetime	of last full o	wner—Runnir	g
of time, if interrupted by intervention	of widow's	estate—Reve	:-
sioner succeeding widow -If entitled	to fresh peri	od of limitation	
from date of his succeeding to estato	•••		S 9 N 10 A 140 N 4
Definition of, within Art. 140	~ ""	· reve	
-		. Inve	S14 N 23
<u> </u>		· vour	
reversioner—When available			. 8 27
If derives right to sue which has acc	rued to Hin		
her as her heir		···	S 2 C1 8 N 3
-Of female holding estate by inheritance			
ther bound by decree against female	•••	•••	. A 141 N 13

Residue—Bequeathed by testator—Suit for share—(Contd.)	
(ii) Against executor	
(a) Executor, whether liable to render accounts for	
12 years before suit in anit by residuary legatee	
to recover his share granted under the will	A 123 N 7
(b) Limitation	A 123 N 2
2001 4 2 4 4 7 4 4 T 1 1 1 T 1 T 1 T 1 T 1 T 1 T 1 T 1	A 123 N 2
(ii) Against executor de son tort—Limitation	A 120 K 2
with direction to pay certain legacy—Limitation	A 123 N 2
	A 120 M 2
(v) By heir against person in possession who has taken out	A 123 N 6
letters of administration—Limitation	A 123 N 0
(vi) By heir against person in wrongful possession—Limi.	
tation applicable, whether same as applicable to suit	4 400 N P
for legacy or distributable ahare of estate	A 123 N 6
(vii) If barred, whether bars claim for administration of	
estate of deceased person	A 123 N 3
(viii) Legacy entailing administration of testator's estate—	
Limitation	A 123 N 3
(ix) Limitation—Starting point A 123;	A 123 N 11
(x) Recovery of moveable property held for some inter-	
vening time by Hindu widow-Limitation	A 123 N 5
(xi) Time, whether extended by virtue of S. 6, Limitation	
Act	A 123 N 18
/ " illy charged	
of Art. 123 : .	A 123 N 2
(c)	A 123 N 10
	/"(C====
Res judicata	a o 37 10
Applicability to decision of question of limitation	S 3 N 19
Decision between same parties in prior execution application as to	
estion of limitation, if can be	
	S 15 N 24
 be in time—Decision, if can 	
be re.opeoed in subsequent application	83 N 19
Limitation-Test to see if question of limitation is res judicata	S 3 N 19
Respondent	1
——Legal representative of—See under Legal representative.	
Restitution	
Application for	
(a) As result of order of Privy Council—Limitation	A 183 N 4
(b) Under Civil P. C., S. 144	,
(i) Application dismissed or properly disposed of—Second	
application out of time, if maintainable	A 181 N 7
(ii) Application stayed and consigned to record room—	
Second application out of time if barred	A 181 N 7
(iii) Limitation—Startiog point	A 181 N 7
Restitution of conjugal rights	
Snit for	C 00 N 15
(a) Applicability of S. 23 read with Art. 120	S 23 N 15
(b) Cause of action, whether continuing one within S. 23, Limita.	N 46
tion Act	A 120 N 46
(c) Limitation (d) Whether suit for possession within S. 28	A 120 N 46 B 28 N 3

Restraint					
		***		A 19	N 1
	•••	•••		A 19	N 1
Resumption					
-Resumption of rent-free land-Suit for	or_See at	uder Rent			
Bevenue	DI —DEC 11	naer rent.			
——Arrears of (a) And demand recoverable as such		Dualin mista		A 12 1	
(b) Demands recoverable as arrears				16 N 2, N	
(c) Estate sold for—Statutory oblig				10 N 2, N	28
over surplus to owner—Enfor					
tion				A 62	N 7
(d) Property sold for	••••	•••	•••	11 02 .	•••
(i) Interest of defaulter sol	d for dob	ts recoverable	as if		
they were arrears of la					
ween	•••	***		A 12 1	
(ii) Remedy of owner	•••	•••		A 12 1	N 8
(e) Sale for					
(i) Surplus sale proceeds on-	-Suit for-	-Limitation_		A 62 N	21
(11) Surplus sale proceeds pa			ait by		
real owner against payer			•••	A 62 N	21
(f) Sale of mortgaged property for	-Surplus	sale proceed	s paid		
to mortgagor — Suit by mo money out of surplus sale pro-	rtgagee t	recover mo		A 62 N	01
(g) What are, under Madras Reven	reeds—Li	mitation		A 12 N	
		ry Act, os. a		A 120 N	
-Mittadar's dues, whether revenue wi		ing of Aut 00		A 99 I	
-Revenue agent -Suit by, for costs-I				A 84	
-Revenue register-Name in-Mutatio	JIIIII COL	***	T arms	2 01	4
tation—Starting point	on or—con	t to compet—	THUIT-	A 120 N	KΩ
Revenue Courts	•	•••	• •	22 120 21	-
-Revenue Court-Whether Civil Cour	441-2-		100.	1 100 37	٠.
				A 182 N S 14 N	
	• •	• • •	•••	5 14 IV	10
Revenue cale law					
Sale underWhen becomes final and	conclusiv	е	•••	A 121 1	N 5
Reversion					
Whether necessarily dependent on lif	e estato	***	•••	A 140 h	Ñ 4
Reversioner					
-Cause of action accruing in the lifetim	e of last f	ull owner_Ru	nning		
of time, if interrupted by intervents					
sioner succeeding widow-If entitled					
from date of his succeeding to estate		٠		59 N	
Definition of, within Art 140	•••	••	•••	A 140 N	4
	~ .	. 1	ever-		
			••	S 14 N	23
· · · · · · · · · · · · · · · · ·		70	our of	_	
reversioner—When available		T-1 1 .		S	27
If derives right to sue which has ac her as her beir	eruea to	MODEN DELL'A		S 2 C1 8 N	
Of female holding estate by inheritar	nee under	Hunda law	Who	020101	1 3
ther bound by decree against female		Hibdh 14%—	11110-	A 141 N	13
stice nound of accret aleumes sometime			• • •		

3014	GENERAL INDEX		
Reversion	mer_(Contd.)		
	nale limited owner		
(a)	Female making alienating which is not binding on estate	e—	
	Remedies of reversioner	•••	A 141 N 12
(b)	Whether harred by adverse possession against female limit	ted	
4.5	nwner	•••	A 141 N 13
(6)	Whether barred by adverse possession against last male own	ier:	A 141 N 14 A 141 N 13
	ndu widow-Whether bound by decree against Hindu wide		A 141 N 13
	nless proprietor in the Pnnjab—Whether must set aside alie	na-	A 91 N 11
	before he can claim relief he wants	•••	S 2 Cl 8 N 5
	eversioner, if derives right to sue from annther		5 2 OI OIN D
	ssion of one reversioner — Whether possession on behalf	r est	A 140 N 2
	eversioners	ion	A LIU M 2
of s	urrendered property by limited owner prior to surrender	r_	
	ersioner whether gets immediately right to property surr		
dere			A 141 N 9
Reme	dies ofIn case of alienation by limited female owner	•••	A 125 N 2
Remo	ote reversioner—Suit by		
(a)	For declaration that alienation by Hindu widow is not bi	nd-	
	ing on reversioners—Limitation A 120 1	N 31	; A 120 N 34
(b)	For declaration that altenation by limited owner is not bit	nd-	
	ing on reversion-Suit after death of limited owner-Lin	mı-	A 120 N 34
(6)	For declaration that transaction by the limited owner	not.	A 120 M DE
(0)	amounting to alienation of land is not binding on revers		
	-Limitation		A 120 N 34
(d)	To declare alienation by Hindu or Mahomedan female v	oid	
	except for her life or until remarriage—Limitation	•••	A 125 N 3
(0)	To impeach alienation by limited female owner - Mainta		
	ability of suit—Limitation	•••	A 125 N 8
	of-To challenge alienation made by limited female owner		A 125 N 6
	ognition and purpose of such right	•••	A 125 N 0
	ent tenement beld under or by virtue of any interest for l		
ther	or any term of years exceeding three years from the grant: eof—Effect on computation of 20 years' period for acquisit:	ing	
of es	sement yes period for acquisit	1011	5 27
Suit I		•••	
	Against widow-For recovery of moveable property held	for	
	some intervening time by her-Limitation	• • • •	A 123 N 5
(b)	After death of widow who has let nut validly property to	8 0	
(a)	tenant at will—Limitation—Starting point	•••	A 141 N 6
(6)	By one reversioner against alience from widow within years of widow's death—Other reversioner impleaded		
	party defendant — Latter filing written statement after		
	years claiming his sharn also against alienco - His right,	if	
	extinguished by his not filing suit for his share within	12	
(a)	years	•••	S 28 N 6
(a)	By reversioners after death of widnw nf testator for constru- tion of his will and declaration nf plaintiffs' rights — Si	1C-	
	cannot be barred as long as right to property in respect	of	
	which declaration is sought is a subsisting and continui	ing	
	right		S 23 N 4

Reversioner-Suit by-(Contd.)	
(e) Challenging alienation or adoption by Hindu widow — Each reversioner, if entitled to independent period of limitation : (f) C	S 9 N 10
	A 11 N 2a
	A 120 N 34
testator—Limitation—Starting point (i) For declaration that alienation by de facto guardian of minor daughter is not binding on reversion—Limitation—Starting	A 120 N 21
point (1) For declaration that alienation by female guardian of minor's	A 125 N 16
property is void—Limitation	A 125 N 5
not binding on reversion (i) Each reversioner, whether has separate cause of action. (ii) Further alienation by alience, whether furnishes fur-	A 120 N 34
ther cause of action (in) Limitation — Starting point — Cases governed by	A 120 N 34
Art. 120	A 120 N 34
(i) For declaration that alienation by limited female owner, who is in possession of life estate by virtue of bequest, grant or transfer inter vivos is not binding on him—Limitation (m) For declaration that alienation by limited owner by way of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control of the control	A 120 N 34
property subse-	A 125 N 15
quent to the mortgage (n) For declaration that an alleged adoption is invalid—Limita-	A 125 N 15
tion—Starting point (o) For declaration that decree fraudulently obtained against Hindu widow is not binding on reversion — Limitation —	A 118 N 8
Starting point (p) For impeaching alienation by Hindu mother of minor son's	A 120 N 34
property where by subsequent death of minor mother herself becomes heir—Limitation	A 125 N 16
(q) For impeaching alienation by Hindin widow (i) Causo of action, whether one in case of all reversioners: (ii) If next reversioner fails to bring such suit cause of	A 125 N 7
nction, if revived in favour of one who is since born: (r) For impeaching alienation by Hinda widow—Nature of suit: (s) For impeaching alienation by limited female owner—Right of minor to bring such suit ander Punjab Castomary Law where major reversioners omit to sue within benefit of the proof of	A 125 N 7 A 125 N 7
limitation (t) For possession	A 125 N 7
(i) Against representatives of life tenant continuing in pos- session—Limitation (ii) Challenging adoption under which defendant claims to	A 140 N 2
be in possession—Limitation (iii) Where adverse possession commenced to run against	A 140 N 7
last male owner—Limitation	A 141 N 4

3010	
Reversioner-Suit by-For possession-(Contd.)	
(iv) Where female bad tried to set up full title by assertions	
of such right	A 141 N 15a
(u) For possession of estate of last male owner	
(1) Suit resisted by person alleging bimself to be adopted	
son of last male owner - Adoption found as a fact to	
son of last male owner — Adoption found as a fact to be by widow to herself—Reversioner, whether embar-	
rassed by widow's adoption of defendant	A 118 N 2
(ii) Suit resisted by person found to be adopted by widow	
of last male owner to herself - Roversioner, whether	
can recover estate without disturbing adoption	A 118 N 2
(v) For possession of estate surrendered by Hindu widow in	
favour of daughter who dies before surrenderer-Limitation	
_Starting point	A 141 N 9
(w) For possession of estate anrrendered to him by Hindu widow	
_Limitation	A 141 N 9
(x) For possession of female's estate	•
(1) Also involving declaration as to invalidity of adoption	
hy female—Limitation	A 141 N 16
(ii) Applicability of Art. 141 and any special or local law	
prescribing limitation for such suit	A 141 N 22
(iii) Burden of proof	A 141 N 20 A 141 N 21
(iv) Limitation—Starting point	A 141 N 17
(v) On ground of mistake—Limitation	A 141 N 19
(vi) Time, whether suspended on ground of legal disability:	A 141 N 10
(y) For possession of female's estate acquired by trespass	V TAT TI WA
(z) For possession of Hindu widow's estate	A 148 N B
(i) On ground of forfeiture on remarriage—Limitation (ii) On ground of forfeiture on unchastity—Limitation	A 143 N 9
	21 220 2
(z1) For possession of immovable property (i) Burden of proof	A 140 N 9
(ii) By other reversioner where one reversioner bas obtained	
possession and has subsequently lost it—Limitation	A 140 N 2
(iii) By reversioner who has obtained possession but bas	
aubsequently lost it—Limitation	A 140 N 2
(iv) By successor of reversioner—Limitation	A 140 N 6
(v) Cause of action already accrued to person from whom	A 140 N 2
reversioner derived bis title—Limitation	A 140 M
(vi) Cause of action on which such suit is based, in whose favour must arise	A 140 N 2
(vii) Illustrative eggs within Art 140	A 140 N 4
(viii) Limitation—Starting point A 140; A 140 N	2: A 140 N B
(ix) Of Hindu female - Against alience from female -	
Limitation	A 141 N 12
(x) On death of Hindu or Mohamedan female	1 44 M O
(a) Cause of action—When arises	A 141 N 2 A 141 N 2
(b) Essentials of—Applicability of Art. 141	A 141 N 3
(c) For declaration of right to property—Limitation (d) Limitation A 14	1. A 141 N 2
(xi) On ground of re-marriage of Hindu widow—Limitation	A 141 N 9
(z²) For possession of property alienated by female by usufructu-	
ary mortgage for necessity - On death of female - Main-	
tamability of suit	A 141 N 6

Reversioner-Suit by-(Contd.)

ersioner—Suit by—(Contd.)	
(z3) For possession of property alienated by female limited owner	
without necessity	A 141 N 15
(z4) For possession of property alienated by sonless proprietor in	
Punjab—Limitation	A 91 N 11
(z5) For possession of property let out validly by widow to	
tenant-at-will—Limitation—Starting point	A 141 N 6
(z ^e) For possession of property purchased by last male owner	
where neither be nor his widow was in possession (z²) For possession of property surrendered by limited owner—	A 141 N 14
Against alience from limited owner prior to surrender—	
Limitation	A 141 N 9
(z8) For property reserved to herself for maintenance by limited	11 111 11 0
female owner after surrendering the rest to reversioner-	
Limitation	A 141 N 9
(z9) For recovery of immovable property on death of Hindu	
widow_Limitation	A 123 N 5
(z10) For recovery of moveable property on death of Hindu widow	
-Limitation-Starting point	A 120 N 12
(z11) For recovery of property from alience of widow — Whether	
suit for rescission of contract	A 114 N 1
(z12) For redemption of usufructuary mortgage made by last male	
owner and which is transferred by mortgages, during	A 141 N 18
widow's lifetime to third person—Limitation (z ¹³) For setting aside alienation by widow—Death of reversioner	W 141 W 19
pending suit—Declaration of abatement by Court—Applica-	
tion by next reversioner to continue suit—Whether can be	
treated as one under Civil P. C., O. 1 R. 1 and within	
Art 181, Limitation Act	A 171 N 2
(z14) In respect of transfer of property by member of family to	
whom limited owner has given such property by way of	
family settlement—Limitation	A 125 N 14
(z15) Reversioner getting less than his share by mistake of law -	
Suit by reversioner against co-reversioner for equal share —Limitation	A 141 N 17
(z ¹⁶) To challenge alienation by widow—One reversioner minor—	Watt Will
Adult reversioner not filing snit—Suit by minor within three	
years of attaining majority but more than 12 years after	
alienation—Suit, if barred	S 7 N 21a
(z ¹⁷) To challenge alienation or adoption by widow	
(i) Minor reversioner, right of, to extended period of limi-	
tation on ground of minority	S 6 N 17
(ii) Whether bar of limitation against one reversioner	C C M 10
(I) Whether par of initiation against one reversioner	S 6 N 17
—Applica-	
	A 125 N 3
(ii) Except for her life or until remarriage - Alienation,	
nature of, competent to attract Art. 125	A 125 N 13
(iii) Limitation—Starting point . A 125, A 125 N 2	, A 125 N 18
(iv) Relief in declaratory suit which is time-barred, whe-	1 10F N 10
ther can be obtained (v) Time, whether extended by virtue of S 18, Limitation	A 125 N 19
Act	A 125 N 18
4100	

3018	GENERA	L INDEX		
Reversioner	—Suit by—To declara alie:	nation by Hindn or M	lahon	iedan female
	vi) Under Punjab Limitation vii) Where possession of fem-		 richt	A 125 N 17
(z ¹⁹) To d a	irrespective of her being iii) Who may bring sneb suit declare alienation by Hindu eath of Hindu female prep nother female and plaintiff is	a Hindn nr Mohamedan within Art. 125 widnw vnid — Suit whe erty is to go absolute reversinner to widow ali	re on	A 125 N 5 A 125 N 9
	ng property-Maintainability			A 125 N 3
point	ee from Suit by, for possess: bound by alienation by	•••	٠	A 141 N 8
necessit			***	A 141 N 15
necessi	у	***	•••	A 141 N 15
entered	hound by compramise in na into by limited heir			A 125 N 13
relief w	bound to set aside alienation hich he wants r bound to sue for declaration			A 91 N 4
that be	r alienation is void can waive forfeiture nn rema			A 125 N 2 A 148 N 12
	ersons are entitled to possessi			A 125 N 3
Review				-
		there is be set a	snffi.	S 5 N 36
			•••	· A 173 N 3
	eal, distinguished	•••	•••	A 173 N 3
——Applicat (a) Do	ion for ly of judgment and time req ecree, sentence or order songt	uisite for ubtaining con t tu be reviewed and co	py of	
j	udgment to be excluded	•••	•••	S 12 S 5
(c) D	elay in filing, excuse nf smissal for default—Applicati See under Civil Procedure Cod		 	30
Į.	stension of time—Subsequent modifying law or practice—If p	ground for extending tim	10	S 5 N 19
, i	ling of, on 90th day, 89th day f can be excused			S 5 N 5
	me for copies nf decree a eviewed to be excluded	nd judgment sought to) he	S 12 N 29
(g) T	me requisite for obtaining bo lecree should be excluded			S 12 N 8
(0) 1	ime taken to ohtain copies nf	limitation though		S 12 N 7
C-	•	nliday—Presentatio	n on	
Ground	s for		•••	S 4 N 62
	ar of limitation clear nn fac notice such bar—If ground for		e to	S 3 N 44

Review—Grounds for—(Contd)				
(b) Judgment not stating that cer	tam aspects	of question	of	
limitation were considered—If				S 3 N 44
——Maintamability of, in regard to questi	on of lumitati	on	••	S 3 N 44
—Meaning of—Within Art. 162	•••	• •	•••	A 162 N 3
Of judgment-See under Judgment.				
Revision				
Application for				
(a) Against order of inferior Crimins	al Court—Li	mitation	٠.	A 181 N 23
(b) Appeal, treatment as—When pr	oper	•••	٠.	S 5 N 30
(c) Time spent in obtaining copy of	order sough	t to he revi	sed	
-Whether can be excluded iro			of	~ ** ** .
High Court for filing such petit		•••	•	S 12 N 4
 (d) Whether subject to any period of Application made after undue delay- 	I limitation		***	S 3 N 26
interfere	-mgu Cour	MIII ICIASC	***	S 3 N 26
Competency of-Order refusing to exc	nsa delay	•••		S 5 N 39
—Court of—If can review finding on qu				N 43 F N 3
-Failure to dismiss time-barred proceed				5 3 N 43
			•••	D 0 IV 43
 From judgment of Small Cause Court prior appeal from previous decree of 				
matter—Reliefs are not same	pman Cause	Court III sa		S 14 N 19
——Maintainability of	•••	•••	•••	D 11 11 10
(a) Erroneous application of wrong	Article of A	ct_Revision	if	
lies			ទីន	N 43 F N 3
(b) Erroneous decision on question	of law in	connexion w		#. -
limitation	•••	•••		83 N 43
(c) Error in decision of question of		-If ground	for	
revision of decision of Small Ca	use Court	•••	•••	S 3 N 43
(d) On question of limitation (e) Refusal or failure of Conrt to	dende meter	unl anaction		83N43
limitation—If ground for revisi		nai question	•••	S 3 N 43
—Powers of High Court—Extent of		•••	•••	S 3 N 43
-Revision application	•••			
(a) Whether appeal	•••			A 177 N 2
(b) Whether subject to abatement	•••	•••	•••	A 177 N 2
(c) Whether suit	•••	•••		A 177 N 2
Right				
- Declaration of Suit for Suit for d	eclaration of	right of pu	blic	
highway and for removal of obstruct			•••	A 120 N 2
Meaning of	•••	•••	•••	S 23 N 1
Of ferry-Violation of, by setting up	another ferry	; — Whetbe	r a.	
continuing wrong		•••	•••	S 23 N 14
- Of way-Obstruction to-Whether a		rong	•••	S 23 N 13
Of worship-Suit to establish-Limit		•••	•••	A 120 N 48
——Periodically recurring right—What is (a) Claim to get manibam or annu-	1 -1/			
revenue collection of village, w			, 01	A 131 N 5
(b) Customary right to remission o	f rent, wheth	er such righ	ıt:	A 131 N 5
(c) Exclusive and perpetual right of				
	worship, whe	ther such rig	ht	A 131 N 6
(d) Palla or right to worship idol in	worship, whe turn, whether	ther such rig er such right	ht 	A 131 N 6 A 131 N 6

Right-Periodically recurring right, what is-(Contd.)				
(e) Payment of dhara or assessment or customary rent to inam.				
dar, whether such right	A	131	N	t
(f) Right to adima allowance, whether such right	Α	131	N	ŧ
(g) Right to graze cattle in certain forests, whether such right:	Α	131	N	ŧ
(b) Right to levy talugdari dnes from defendant, whether such				
right		131		
(i) Right to maintenance, whether such right		131		
(1) Right to malikana, whether such right	Α	131	N	ŧ
(k) Right to receive Lawajama or Deshmukhi, whether such				
right		131		
(1) Right to recover dasturat, whether such right	A	131	N.	ŧ
(m) Right to share in offcrings to temple, whether such right	A	131	N	Ē
Possession of Consists in exercise of the right A 145	& .	44	N I	[]
Recurring right				
(a) Establishment of—Suit for A 13:	1; A	131	N	2
(1) Against co-sharer or rival elaimant of right_Limi.				
tation applicable	Α	131	N	4
(ii) Burden of proof	Α	131	N.	5
(iii) By holder of hereditary office of Karnam to establish				
right to annual payment as rusum—Limitation	A	181	N	ŧ
(iv) For declaration of right to mosety of offerings made at				_
shrine of Muhammadan saint—Limitation	A	131	N	Ĉ
(v) For declaration of right to periodical payments as well				
as for recovery of arrears thereof—Limitation	A	131	. N	č
(vi) For declaration of title to malikaoa allowance against				. ,
rival claimant—Limitation	Α	181	N.	•
(vii) For declaration that plaintiff is liable to pay a certain				
sum periodically to defendant and not the higher sum		181	N.Y	٠,
claimed by him-Limitation-Starting point	А	101		١
(viii) For declaration that plaintiff is not liable in respect of				
periodical right claimed by defeodant against him-		181	N.T	٠,
Limitation	A	191	. 11	٠
(ix) For declaration that plaintiff is not liable to pay water				
cess to Government—Limitation	A	181	W	٤
(x) For recovery of arrears of paymeots periodically due		131	1NT	9
Limitation	A	131	N	9
(xi) For recovery of reut—Limitatioo	A	131	NT.	9
(xii) For recovery of wages—Limitation	A	131	14	u
(xiii) Landlord net suiog for possession within twelve years				
of termination of lease - Suit to recover arrears of		101	ж	9
periodical payments, whether barred	Ą	131 131	M	c
(xiv) Limitation—Starting point	A	191	11	
(xv) Prayer for consequential relief in such suit, whether		131	ът	n
necessary for applicability of Art. 131	Α	131	14	-
·		131	N	3
	Λ	101	•	_
1 1 1 4 1 101				
barred under Art. 131, suit for arrears of periodical payments, whether will be time barred	Α	131	N	3
(xviii) To establish plaintiff's right as mutawalli of mosque				
				_
claimants—Limitation A 13	1 N	5 F	N	5

Right-Recurring right-Esta	blishmen	t of, suit	for-(Contd	.)	
(xix) To establish p	laintiff's r	ight to e	nhance rent.	etc.—	
Limitation	•••	•••	•••		A 131 N 7
(xx) To establish pla	untiff's rig	ht under d	ertain lease i	o hold	
land as perma	nent tenan	t at fixed	annual rent—	-Limi-	1 101 11 1
(xxi) To establish ris	tht to buris	l feeg_T	mitation - S	tarting	A 131 N 5
point				ar orug	A 131 N 5
(xxii) When plaintiff	is first ref	nsed enjoy	ment of his r	ight—	
Refusal, what			•••		A 131 N 9
(xxni) Whether main	tamable w	bere righ	t depends or		
other right w			under S. 28	•••	A 131 N 2
(b) Suit for declaration of		110 n	•••	•••	A 102 N 3
(c) Suit for sums due hy (1) Limitation	reason or				A 102 N 3
(ii) Where sums so	ught to be	recovere	d are wages—	-Limi-	A 102 K 3
tation		•••	•••	•••	A 102 N 3
Right to sue					
-Arising in representative	capacity ca	n be enfo	reed by ners	on on	
whom such representative	capacity o	devolves	***		S 2 Cl 8 N 2
Construction of Act in favo	our of righ	t	•••	Pr	eamble N 20
——Devolution of	•••	•••	•••	1	8 2 Ol 4 N 1
-In respect of any particul	ar interest	-Enforce	eahility by p		
becoming entitled to it	•••	•••	•••		8 2 Cl 8 N 2
——In suits hased on wrong ——Meaning of	•••	•••	•••		: A 120 N 8
-Right of action existing at	in almost d	***	·		A:120 N 3
persons representing his e		eath aurv	ives to and i		S 2 Cl 8 N 2
-Right to sue accrued in fa		erson in 1			
city-Whether would be	derived by	y person o	n whom rep	resen-	
tative capacity devolves a		•••	S 2 C	18 N 8;	A 124 N 15
When accrues in suits for		tion	•••	•••	A 120 N 3
	partition	***	•••	•••	A 120 N 8
When arises	***	•••	•••	•••	A 120 N 3
——Whether means first right	to sue	•••	•••	•••	A 120 N 3
Road					
——Meaning of	•••	•••	***		A 146-A N 4
Public road-Meaning of	•••	***	•••	•••	A 146-A N 4
Royalty					
Minimum royalty reserved	hy landlo	rds in cas	e of mining le	ease —	1 110 110
Whether rent Recovery of -Suit for -Su	it based on	registered	deed_Limit	ation .	A 110 N 2 A 116 N 9
•	it based on	registere	decu-2imi	delou.	11 110 14 5
Salary					
——And wages—Distinguished ——Employee drawing advance	an against	anlare B	alanaa daa a	n cook	A 7 N 2
perconnt_Suit for_Limit	ation	***	***		A 85 N 4
Suit for-Salary payable	to plaintiff	bnt wro	ngfully retain	ned by	
hatwara ameen—Suit ago	inst ameen	Limita	tion	•••	A 62 N 31

Sale	
By mortgageeMortgagee having power of sale out of Court pur-	
chasing property himself at the sale—Sale is void	A 148 N
-By person who has no authority to sell except under certain con-	
ditions—Validity of sale	A 10 N I
By revenue officer	
(a) Sale within jurisdiction—Setting aside—Suit for—Mere	
irregularities in procedure whether can be allowed to be	
raised in setting it aside after period of limitation provided	A 12 N
by Art. 19	Alan
(b) Setting aside—Suit for (i) Limitatioo—Special and local provision of	A 12 N
(ii) Where sale is without jurisdiction—Limitatioo	A 12 N
Conditional sale—Iostrument of—Interest upoo—Whether allow.	
able	A 63 N
Court sale	
(a) Application for order of confirmation—Limitation	A 181 N 2
(b) Setting aside—Suit for—On ground of mistake—Limitation:	A 96 N
- Decree for, in mortgage suit Application for Limitation	A 181 N
-For arrears of public demand-Setting aside-Suit for-Limita.	
tion	
(a) Where sale is not void	A 120 N
(b) Where sale is void	A 120 N
For arrears of reot of patni taluq-Interest passed to purchaser-	A 121 N
Nature of	A 121 N
- For arrears of revenue-Interest passed to purchaser-Nature of :	A 121 IV
Fraudulent sale	A 120 N 3
(a) Declaration of—Suit for—Limitation (b) Setting aside—Suit for—By certified purchaser—Limitation:	A 120 N 2
	A 120 1.
- Giving rise to pre-emption right-See under Pre-emption.	4 4 4 7 3 7 7
In English mortgages-Suit for-By mortgagee-Limitation:	A 147 N
In iosolvency proceedings-Setting aside-Application for-Limi.	A 166 N S
tation	A 147 N
To mortgage by deposit of title deeds-Suit for-Limitation	A 84 N S
Negotiation of Whether particular business, within Art. 84	A 12 N 1
Not binding on person-Illustrative cases	A 12 M
Null and void	
(a) Plaintiff dispossessed by purchaser—Suit for possession—	A 12 N 3
Limitatioo (b) Remedies of person in respect of	A 13 N 1
(c) Setting aside—Suit for—Whether will be regarded as one for	11 12
declaration that sale is not hinding on plaintiff	A 13 N 1
-Of equity of redemption, whether alrecation	A 120 N 34
Of goods	
(a) Account coosisting of each party selling goods to the other-	
Balance due on—Suit for—Limitation	A 85 N 7
(b) Account consisting of sale of goods on one side and advance	
of loan on the other—Balance due on such account—Suit	A 85 N 8
for—Limitation	7. 00 2. 0
(c) Account consisting of sale of goods on one hand and pay.	
ments of price on the other—Balance due on such account —Suit for—Limitation	A 85 N 6
Data for Dimitation	22 0 - 21 0

Sale—(Contd.)	
-Of Government paper-By hank holding Government paper in	
trust for plaintiff - Suit for recovery of sale proceeds against	
hank—Limitation	A 62 N 31
Of house, whether sale of land	A 120 N 34
Of mortgaged property-By hmited owner-Impeaebment of-	
Suit for—By reversioner—Starting point—Limitation	A 125 N 15
Of property subject to incombrances-Transaction, whether con-	
tains implied contract of indemnity by vendee in favour of ven-	
dor against incumbrances	A 83 N 7
Restraining ofSuit for	
tsale of tenure in which third person is interested—Limitation—	
Starting point	A 120 N 31
Revenne saleFor arrears of revenne subject to all incumbrances	
-Adverse possession acquired prior to such sale, whether an	
incumbrance	A 130 N 6
-Right to enforce-Relief for, is different from that for suit to set	
it aside	S 14 N 19
- Sale certificate - Application for Under Civil P. C., O. 21, R. 94	
-Limitation	A 181 N 21
—Setting saide	
(a) Application for—Dismissal of application and confirmation of	
sale-Auction purchaser, if gets fresh right to apply for	
delivery of possession and fresh period in respect of such	
application	S 9 N 11
(b) Meaning of	A 12 N 2
(c) Suit for	
(i) P	•
(1) F	•
	A 12 N 2
(n) By representatives of deceased mortgagor bound by	A 12 N 2
(n) By representatives of deceased mortgagor bound by sale, for redemption—Whether one for setting aside	
(n) By representatives of deceased mortgagor bound by sale, for redemptionWhether one for setting aside sale	A 12 N 2 A 12 N 2
(n) By representatives of deceased mortgagor bound by sale, for redemption—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to	A 12 N 2
(n) By representatives of deceased mortgagor bound by sale, for redemption—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to set aside sale was barred at the time	
(n) By representatives of deceased mortgagor bound by sale, for redemption—Whether one for setting aside sale	A 12 N 2 A 12 N 3
(n) By representatives of deceased mortgagor bound by sale, for redemption—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even it suit to set aside sale was barred at the time (iv) For setting aside invalid sale of joint share and for possession—Limitation	A 12 N 2
(n) By representatives of deceased mortgagor bound by sale, for redempton—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to set aside sale was barred at the time. (iv) For setting aside invalid sale of joint share and for possession—Limitation (v) For setting aside sale by person who has no authority	A 12 N 2 A 12 N 3 A 123 N 6
(ii) By representatives of deceased mortgagor bound by sale, for redemption—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to set aside sale was barred at the time (iv) For setting aside invalid sale of joint share and for possession—Limitation (v) For setting aside sale by person who has no authority to sell except under certain conditions—Limitation:	A 12 N 2 A 12 N 3
(n) By representatives of deceased mortgagor bound by sale, for redemption—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to set aside sale was barred at the time	A 12 N 2 A 12 N 3 A 123 N 6
(ii) By representatives of deceased mortgagor bound by sale, for redemption—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to set aside sale was barred at the time (iv) For setting aside invalid sale of joint share and for possession—Limitation (v) For setting aside sale by person who has no authority to sell except under certain conditions—Limitation:	A 12 N 2 A 12 N 3 A 123 N 6 A 10 N 13
(ii) By representatives of deceased mortgagor bound by sale, for redemption—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to set aside sale was barred at the time (iv) For setting aside invalid sale of joint share and for possession—Limitation (v) For setting aside sale by person who has no authority to sell except under certain conditions—Limitation: (vi) In respect of sale by Collector under Madras Estates Land Act, S. 118—Limitation (vii) In respect of sale for arrears of Government revenue or any demand recoverable as such	A 12 N 2 A 12 N 3 A 123 N 6 A 10 N 13 A 12 N 7
(n) By representatives of deceased mortgagor bound by sale, for redemption—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to set aside sale was barred at the time	A 12 N 2 A 12 N 3 A 123 N 6 A 10 N 13
(ii) By representatives of deceased mortgagor bound by sale, for redempton—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to set aside sale was barred at the time. (iv) For setting aside invalid sale of joint share and for possession—Limitation (v) For setting aside sale by person who has no authority to sell except under certain conditions—Limitation: (vi) In respect of sale by Collector under Madras Estates Land Act, S. 118—Limitation error (vii) In respect of sale for arrears of Government revenue or any demand recoverable as such (a) Limitation—Starting point (b) Where sale is not hinding on plaintiff—Limita.	A 12 N 2 A 12 N 3 A 12 N 6 A 10 N 13 A 12 N 7
(n) By representatives of deceased mortgagor bound by sale, for redemption—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to set aside sale was barred at the time	A 12 N 2 A 12 N 3 A 123 N 6 A 10 N 13 A 12 N 7
(ii) By representatives of deceased mortgagor bound by sale, for redemption—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to set aside sale was barred at the time	A 12 N 2 A 12 N 3 A 123 N 6 A 10 N 13 A 12 N 7 2; A 12 N 10
(n) By representatives of deceased mortgagor bound by sale, for redemption—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to set aside sale was barred at the time	A 12 N 2 A 12 N 3 A 12 N 6 A 10 N 13 A 12 N 7
(n) By representatives of deceased mortgagor bound by sale, for redempton—Whether one for setting aside sale (iii) Defence of invalid sale, whether harred even if suit to set aside sale was barred at the time (iv) For setting aside invalid sale of joint share and for possession—Limitation (v) For setting aside sale by person who has no authority to sell except under certain conditions—Limitation: (vi) In respect of sale by Collector under Madras Estates Land Act, 5. 118—Limitation (vii) In respect of sale for arrears of Government revenue or any demand recoverable as such (a) Limitation—Starting point (b) Where sale is not hinding on plaintiff—Limitation (viii) In respect of sale in execution of decree of Civil Conrt (a) Limitation—Starting point (a) Limitation—Starting point (b) Where sale is not binding on plaintiff—Limitation (b) Where sale is not binding on plaintiff—Limitation in the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of the constant of	A 12 N 2 A 12 N 3 A 123 N 6 A 10 N 13 A 12 N 7 2; A 12 N 10 A 12 N 1;
(n) By representatives of deceased mortgagor bound by sale, for redemption—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to set aside sale was barred at the time (iv) For setting aside invalid sale of joint share and for possession—Limitation (v) For setting aside sale by person who has no authority to sell except under certain conditions—Limitation: (v) In respect of sale by Collector under Madras Estates Land Act, S. 118—Limitation (vii) In respect of sale for arrears of Government revenue or any demand recoverable as such (c) Limitation—Starting point (b) Where sale is not binding on plaintiff—Limitation—Starting point (viii) In respect of sale in execution of decree of Civil Control (c) Limitation—Starting point A 12 (b) Where sale is not binding on plaintiff—Limitation—Starting point A 13 (d) Where sale is not binding on plaintiff—Limitation	A 12 N 2 A 12 N 3 A 123 N 6 A 10 N 13 A 12 N 7 2; A 12 N 10
(n) By representatives of deceased mortgagor bound by sale, for redempton—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to set aside sale was barred at the time (iv) For setting aside invalid sale of joint share and for possession—Limitation (v) For setting aside sale by person who has no authority to sell except under certain conditions—Limitation: (vi) In respect of sale by Collector under Madras Estates Land Act, S. 118—Limitation (vii) In respect of sale for arrears of Government revenue or any demand recoverable as such (a) Limitation—Starting point (b) Where sale is not binding on plaintiff—Limitation (viii) In respect of sale in execution of decree of Civil Conrt (a) Limitation—Starting point (b) Where sale is not binding on plaintiff—Limitation (ix) In respect of sale in pursanance of certificate under	A 12 N 2 A 12 N 3 A 123 N 6 A 10 N 13 A 12 N 7 2; A 12 N 10 A 12 N 1;
(ii) By representatives of deceased mortgagor bound by sale, for redemption—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to set aside sale was barred at the time	A 12 N 2 A 12 N 3 A 12 N 6 A 10 N 13 A 12 N 7 C; A 12 N 10 A 12 N 1 ; A 12 N 10
(n) By representatives of deceased mortgagor bound by sale, for redempton—Whether one for setting aside sale (iii) Defence of invalid sale, whether barred even if suit to set aside sale was barred at the time (iv) For setting aside invalid sale of joint share and for possession—Limitation (v) For setting aside sale by person who has no authority to sell except under certain conditions—Limitation: (vi) In respect of sale by Collector under Madras Estates Land Act, S. 118—Limitation (vii) In respect of sale for arrears of Government revenue or any demand recoverable as such (a) Limitation—Starting point (b) Where sale is not binding on plaintiff—Limitation (viii) In respect of sale in execution of decree of Civil Conrt (a) Limitation—Starting point (b) Where sale is not binding on plaintiff—Limitation (ix) In respect of sale in pursanance of certificate under	A 12 N 2 A 12 N 3 A 123 N 6 A 10 N 13 A 12 N 7 2; A 12 N 10 A 12 N 1;

Sale — Setting aside — Suit for — In respect of sale in pursuance of certification and Public Demands Recovery Act—(Contd.)	icate
(b) Plaintiff, whether must sue within Art. 12 to	
sot aside sale where it is a nullity A 1	2 N 7
(x) In respect of sale in pursuance of decree or order of	
Collector or other revenue officer	
(a) Limitation	A 12
(b) Where sale is not binding on plaintiff - Limi.	
tation A 1	2 N 1
(xi) In respect of sale of patni taluq sold for current	
arrears of rent	
(a) Limitation—Starting point A 12; A 12	N 10
(b) Where sale is not binding on plaintiff - Limi-	
tation Al	2 N 1
(xii) In respect of sale under Rent Recovery Act - Limi-	
tation A 1	2 N 7
	2 N 4
(xiv) On ground of pre-emption - Limitation - Starting	
point A 12	N 10
	2 N 2
(A11) It field baid to a flather — 23 miles and 5	2 N 8
(d) Who can sot aside sale A	2 N 1
——Suit for, by mortgagee	
	7 N 1
(b) Limitation—Starting point A 147; A 14	PMT
- Suit for possession - Rights under contract, if can be set up in	
defence to suit when snit for specific performance is barred S 3	N 15
Surplus sale proceeds	
	N 31
(b) Suit for—By consignor for surplus sale proceeds of goods sold	01
ander reality of the co-	N 31
	0 37 0
	2 N 9
Under Bengal Tenancy Act, S. 173-Setting aside-Application for	37.10
	N 10
	0.37.0
	2 N 8
-Valid and binding as between parties to decree - Whether can be	2 N 1
see uside by third person iii	1 N 6
	1 11 0
Seaman	
Second appeal	
- Finding as to the time requisite for obtaining copies - Finding of	N 33
	N 17
— tre i pres as to institution, it can be russed	
-Plea of prescriptive right with regard to easement - Whether can	N 17
be taken for the first time in second appeal S 20 —Question of fact—Question whether money was paid for interest as	
such or for part payment of principal cannot be raised for the	
first time in second appeal S 20	N 33
- Question of law Question whether facts and circumstances con-	
stitute sufficient cause, if can be raised in second appeal St	N 38

Secretary of State	
Impleading of Secretary of State unnecessarily under mistake of law or fact—Period of notice of enit, if can be deducted as against	
private individuals also defendants in smit — Prior suit against Traffic Manager of Railway Company instead of Secretary of State—Subsequent suit against Secretary of State	
-Whether against same parties for purposes of S. 14	~
Suit against—Exclusion under S. 13, if available Suit by—Before Federal Court—Limitation A 1	S 13 N 4
Security	
Depreciation ofCompensation forSuit for Limitation	A 132 N 11
(a) Suit against—For payment of mortgage monoy—Limitation: (b) What is	
Seduction	
Of daughter-Whether per se actionable Of servant-Whether per se actionable	
Service	
 Loss of —Compensation for—Suit for—In respect of loss of service occasioned by seduction of plaintiff's servant or daughter — 	
Lamitation—Starting point A	26; A 26 N 1
Set-off	
Acknowledgment of liability, if can be coupled with claim of set. off: Limitation—Date with reference to which test is applied	
——Limitation—Date with reference to which test is applied ——When can be claimed	83 N 29
Settlement	
-Father executing settlement deed giving properties to eon and	
directing him to pay an amount to settlor's daughters-Trust	S 10 N 13
for specific purpose, if created in favour of daughters	8 10 N 13
Distributive share—What is	A 123 N 10
In joint family property_Suit for _See under Joint family propertySbare inSuit for.	** 120 11 20
—In partnership of ginning factory — Whether immovable property	
within Art. 141	A 141 N 11 A 120 N 11
Of moveable property—Suit for —Limitation Of property—Suit for — Suit for share of property of intestate —	A 120 N 11
See under Intestate.	
—Of residue bequeathed by testator—See under Residue — Residue bequeathed by testator.	
 Suit forSnit for possession of one half share of property purchased jointly by plaintiff and defendant and for accounts of profits 	
— Limitation	A 89 N 2
possession whether admits of physical possession	A 10 N 7
——Suit by	
(a) For dividend—Limitation	A 62 N 7
(b) For recovery of arrears of dividend—Limitation	A 120 N 30
Shebait	
——Decree obtained against—Whether successors are bound by decree:	A 95 N 7
	Lim. 190

Shebait—(Contd.)	1
-Fraud of-Suit by successor in respect of - Limitation-Starting	
point	A 95 N 13
	A 50 M 13
——Office of	1 100 11 0
(a) Possession of—Suit for—Limitatinn	A 120 N 2
(b) Whether bereditary	A 124 N 4
- Suit by-For idol, or consecrated portrait and valuables belonging	
to it—Limitation	A 49 N 2
-Suit by successor-For setting aside decree obtained by fraud	
against predecessor—Limitation applicable	A 95 N 7
	A 50 11 ,
Shrine	~*
Offerings for-Money received as Suit for Against recipient	
on heball of shrine—Limitation	A 62 N 29
Signature	
Good and valid signature—What is within Art, 64	A 64 N 10
	Y 04 M 10
Sikh Gurdwaras Act	
-S. 28-Suit under-S. 4. Limitation Act, applies	S 29 N 3
Slander	
Compensation for-Suit for	A 25 N 1
(a) English law—How far applicable in India	
	25; A 25 N 1
	A 25 N 1
Slander per se, when actionable under English law	A 25 N 1
Bolicitor	•
Costs-Order of Court for taxation of solicitor's costs against client	
	•
-Whether hars institution of suit hy solicitor against client for	S 15 N 6
costs	SIDNO
Money deposited with solicitor intending to vest ownership with	# +0 X 10
him—Trust for specific purpose, if created	S 10 N 18
Special or local law	
Applicability of S. 12 to cases under	B 12 N 5
- English Statute not in force in British India but which may have	
to he administered in particular cases — Whether special or local	
law	S 29 N 6
the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the same and the s	5 29 N 4
	S 29 N 6
-Law must be in force in British India	5 29 N 6
- Letters Patent, if constitute special or local law	5 25 11 0
— Limitation prescribed by—Exclusion of time under S. 12 — Whe.	S 12 N 2
ther available	
Local law_Meaning of	8 29 N-6
Not prescribing period of limitation for a particular application	
Decree the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state of the state o	S 29 N 3
I ribed by	
	B 29 N 3
eding must	
enco	g 29 N 3
T · · · · I prescribed	
within S. 19	S 19 N 13
Period prescribed by, different from period prescribed by Act -	
Effect of	S 29
Provision of period different from period prescribed by Sch. 1 of	•
Act-Provisions of Limitation Act will not apply except to the	S 29 N 3
extent expressly specified in S. 29	D 20 2. 0

Special or local law - (Contd.)		
—Provision of period of limitation for suit, appeal, or applicat	1	
	100	S 29 N 3
Applicability of Ss 4, 9 to 18 and 22 of Act Provisions of Limitation Act other than Ss, 4, 9 to 18 a.		D 29 M 9
Limitation Act — Whether can be made applicable by a		
reference	:XPI 056	S 29 N 5
-Rules framed under Letters Patent by High Court - W	 Lathau	5 25 R 5
special laws	neuner	S 29 N 6
—Special law	r il	5 29 N G
(a) Expression to be understood only in a relative sense	-	S 29 N 6
(b) Meaning of		S 29 N 6
- Special provision of, under Bengal Tenancy Act, C. P. Tenan-		5 23 R 0
and Madray Estates Act — Whether overrides the provisi		
Limitation Act for suit for compensation for breach of regi		
contract	aucreu	A 116 N 8
	e	S 29 N 3
Specific performance		~ -0,1,0
—Of contract	,	. 1
(a) Suit to enforce		, ,
(1) Illustrative cases		A 113 N 2
(n) Limitation		A 113
(b) What is	***	A 113 N 2
-Suit for specific performance of award-Limitation-Cases gov	rerned	
by residuary Art. 120		A 120 N 42
- Suit for specific performance of contract to sell-Necessary	parties	S 22 N 24a
Specific Relief Act		
-S. 9-Suit under		
(a) By Government—Limitation		A 149 N 2
(b) Landlord, whether can bring such suit when his ten	ant is	
dispossessed	•••	ASNS
(c) Limitation	: 4	48; A8N2
(d) On title-Failure to prove title-Decree, whether c		1.037.0
given subsequently under Specific Relief Act, S. 9		A 3 N 6
(e) Partial dispossession, whether entitles plaintiff to bring	sucn	A 3 N 3
(f) Remedy under Specific Relief Act, when available	•••	ASNS
(g) Whether maintainable where defendant is maintained in		22 0 21 0
session by order under S. 145, Criminal P. C.		A3N7
Sections 10 and 11-Suit under-Limitation	•••	A 49 N 4
Section 42Provisions of	•••	A 125 N 2
Statute of Westminster		
Effect of, on law of easements in England		S 26 N 3
Street		
—Meaning of	1	146.A N 4
Possession of Suit for - By local authority - See under		
authority.		
Submerged land .		-
Presumption is that owner is in possession	A 142	& 144 N 15
Re-formedSuit for possession		
(a) By true owner—Burden of proof		å 144 N 70
(b) Cases where flooding scasonal and cases where submer		
lasting several years—Difference	A 142	å 144 N 70

Submerged land—Re-formed, suit for possession—(Contd.)	
(c) Lands under water for few days every year without inter-	
fering with their use-Presumption of constructive posses-	
sion in true nwner, whether arises A 142	& 144 N 7
(d) Person acquiring title by adverse possession to land re-formed	
-Land again submerged and again re-formed-Title will be	
that of person acquiring title by adverse possession: A 142	& 144 N 7
(e) Plaintiff must prove ownership before submersion: A 142	& 144 N 8
(f) Re-formed land capable of being identified.—Owner is entitled	
to it A 143	& 144 N 7
(g) True owner not in possession before submersion but baving	
subsisting title—Constructive possession during submersion	
	& 144 N 7
(h) Wrongdoer in possession before submersion—Suit for posses-	
sion by true owner within 12 years of re-formation-True	
owner can recover possession A 142	& 144 N 7
Subrogation-See under Mortgage.	
Substitution or addition of new parties	
	S 23 N
Added party constructively party tn suit_S. 22, if applies	5 23 N
-Addition made by Appellate Court in appeal from order of lower	
Court refusing to make the addition-Addition, when to be	C 00 N
deemed to be effected	S 22 N
	C 00 N (
entails dismissal of suit	S 22 N 8
-Addition of naw defendant-Suit barred against bim on such addi-	S 22 N
tion—Suit must be dismissed as against him	S 22 N 6
-Addition of new ground of right ar liability-Illustrations	5 22 M
- Addition of party after period of limitation-Whether affects the	S 22 N 6
suit against ntber defendants already nn record	D 22 M
—Addition of party whose name has been struck nff (a) Names struck nut by bona fide mistake—Restoration of	
	S 23 N 6
names will relate back to nriginal date (b) Snit against sons for compensation for tort of their deceased	0 421.
father—Names of sons struck off from plaint and adminis-	
trator impleaded — Sons again impleaded by anbaquent	
order—S. 22, if applies	8 22 N 6
(a) Whether emanute to addition of past party within S. 99	S 22 N 6
-Addition of persons already represented in snit - Whother amounts	
to addition of new parties	S 22 N 6
Addition or alteration on ground of right or liability	
(a) Claim originally made as being entitled through father-	
Amendment of plaint by making claim as being entitled	
through uncle—S. 22, if applies	S 23 N 6
(b) Defendants originally impleaded as members of joint family	
sought to be made liable in the alternative as partners-	
Whether amounts to addition or substitution of new	~ 00 N C
parties	S 23 N 6
(c) Party impleaded as trustee sought to be made liable person-	S 22 N 6
ally—S. 22, if applies	P 23 M 0
(d) Person claiming in one's nwn right seeking to amend plaint	6 22 N 6
by claiming as legal representative—S. 22, if applies	222.0
(a) Son originally impleaded as heir of father subsequently sought to be placed on record as executor under father's	
will—S. 22, if applies	S 22 N 6
minimos and it defines	

GENERAL INDEX	3029
Substitution or addition of new parties—Addition or alteration on right or liability—(Contd.)	ground of
(f) Suit in personal capacity (i) Amendment of description if plaintiff as managing director of a company—S. 22, if applies (ii) Description of plaintiff amended as administrator of estate—S 22, if applies	S 22 N 6 S 22 N 6
(g) Suit on promissory note signed by defendant in his own behalf and as guardian if mitor—Rebef against property of minor in defendant's hands—Amendment asking for per- sonal relief against the defendant—S. 22, if applies	S 22 N 6
—After institution of suit—Suit will be, as regards him, deemed to be instituted when he was made party	S 22
——Amendment only altering or adding to ground or basis of right or hability of parties already on record — No change in persona of parties—Whether amounts to addition of new parties —	S 22 N 6
Appellate Court adding a person as party to appeal who was not party in the suit S. 22, if applies to such addition	S 22 N 4
Assignment or devolution (a) Assignee from successful claimant under O. 21 R. 58, Civil P. C., taking the transfer before suit by defeated decree. bolder—Whother assignee during predency of suit (b) Assignment must be from a person already a party to suit: (c) Meaning of	S 22 N 28 S 22 N 28 S 22 N 28
Benamidar impleaded in time—Real owner impleaded after limitation—Benamidar actiog as real owner and benami relationship known coly subsequently—S. 22, if applies Change or devolution in interest in pending suit—Whether a case	8 22 N G
of addition or substitution of party within S 22 —Constructive party—Suit by manager of joint Hindu family for	S 22 N 7
rent due in respect of family property—Subsequent addition of members of family—Whether addition of new party within S. 22: —Court of its owo motion ordering addition of party—S. 22, if	S 22 N 5
applies	S 22 N 5 S 22 N 14
by S. 22, sub-s. 2	S 22 N 27
—Addition, when takes effect	S 22 N 26
(a) Disclosure of partners' names in surt relating to firm—Omission of a partner's name from such declaration — Fresh declaration after expiry in limitation — Such partner, if	
newly added party within S. 22 (b) Partnership reconstituted—Suit by it in respect of contract with old firm—Substitution in hid firm after limitation—	S 22 N 19
Whether substitution of a new party (c) Suit by one partner for dissolution of partnership or for accounts—One or more of their partners or one or more of legal representatives of deceased partner not impleaded	S 22 N 18
within time—Whole snit, if must fail	S 22 N 19

o of institution of.

Fresh parties merely added for salegoarding rights subsisting as

Substitution or addition of new parties-(Contd.)

		o of institu		
		eration of	general	
provisions of Limitation Act	•••	•••	•••	S 22 N 13
Joint promisees—Suit by one ooly not misees not made parties—Soit to be	such pron	nisees Oth	er pro-	S 22 N 17
Minor_Circumstances noder which			anneaf	13 22 11 21
will be addition of new party	addition	of mitot in	аррын	S 22 N 8
Misdescription				
(a) Amondment by giving correct of	d <i>e</i> scriptio	n is not add	lition of	S 22 N 10
new party—Illustrations (b) Company in liquidation seed as	official lie	aidatan af th	,	S 22 N 10
pany instead of the company				
by giving correct description,				
of new party	•••	•••	***	S 22 N 10
(c) Defendant sued in his individua	d capacity	-Plaintiff	denying	
title of the idol whose shebait party defendant—Whether ad			I Idol 83	S 22 N 10
(d) Omission of name of temple in o			nent by	0 22 21 11
giving correct description—W				S 22 N 10
(e) Person intended to be implead				
impleaded — Omission to imp		o bona fide :	mistake	S 22 N 10
—Whother a case of misdescri (i) Plaintiff in suit by District Boa	iption	had an ilothali	erman of	5 22 N 10
District Board" instead of "Di				
by giving correct description is	not addit	tion of new p	arty	S 22 N 10
(g) Plaintiff suing on behalf of idol				
in hody of plaint — Omissioo in cause title—Amendment by				
Whether addition of a new par		Miscr desert	heron	S 22 N 10
(h) Plaintiff's company afready on i	record -			
behalf not making it clear in	what ca	pacity ho s	ued —	
Amendment by giving corre amounts to addition of new pa	et descri	ption - W	vnetner	S 22 N 10
(1) Suit against loreign firms wh	hich had	been dissol	ved to	2
plaiotiff's knowledge - Imple	eading of	partners in	British	
Iodia after limitatioo on fie against loreigo firms — Whet	oding sui	t not maint	ainable	S 22 N 10
(1) Suit against Muoicipal Commit	ner a cas teo — Cor	e or misuest	mistake	0 22 2
made to be represented by its S	Secretary	iostead of Pr	csident	
-Amcodment by giving cor	rect desc	ription 🛶 🌃		S 22 N 10
amounts to addition of new pa (k) Suit against Raifway Company	rty . — Defe	ndont deseri	hed as	5 22 11 20
Agent of Raifway company ios				
Amendment by giving corre	ect descr	iption — W	hether	S 22 N 10
amounts to addition of new pa (I) Suit for dissolution of partners!	irty himanil fa		Dolon	S 32 N 10
dant described as firm by bond	a fide mis	tako — Ame	ndment	
by giving correct description	- Whoth	er addition	of now	0 00 11 10
(in) What amounts to	•••	•••		6 22 N 10 5 22 N 10
(in) What amounts to	•••			

S 22 N 5

S 22 N 5 S 22 N 5

S 22 N 23

S 22 N 16

S 22 N 6

GENERAL INDEX 3031 Substitution or addition of new parties-(Contd.) —Mortgage suit (a) Failure to implead all persons interested in equity of redemption (1) Addition of such persons after limitation has expired against thom-Whether necessitates dismissal of suit : S 22 N 17 (11) Suit, if a duly constituted one S 22 N 17 (b) Joinder of parties in-Principles governing . . S 22 N 17 (c) Mortgagee right vested in several persons jointly (1) One of them alone cannot enforce mortgage without impleading others as parties S 22 N 17 (11) Suit by one without impleading others - Addition of others after limitation - Whole suit must be dismissed : S 22 N 17 (d) Parties on record representing in law absent persons interested in mortgage right or equity of redemption - Subsequent addition of such persons - Whether amounts to addition of new parties S 22 N 17 -Necessary parties (a) Agreement to sell property to a certain person-Subsequent sale to third party having notice of prior agreement - Suit for specific performance by former-Latter impleaded more than three years after breach of contract-Suit, if barred ... S 22 N 24a (b) Firm-Intention to implead firm clear - Misdescription in cause title is immaterial S 22 N 18 (e) In suits relating to firms S 22 N 18 (d) Necessary party not added in time - Suit must be dismissed in its entirety S 22 N 15 (e) Single individual trading under the name and style of a firm -Suit with firm name and not individual as party-Death of individual before suit—Suit is a nullity S 22 N 18 (f) Suit for ejectment of sub-tenant's sub-tenant - Former not impleaded in time—Whole suit, if fails S 22 N 22 (g) Suit in the name of firm by one of its members as its agent-Other partners made co-plaintiffs after limitation-Whether amounts to addition of new parties S 22 N 18 (h) Suit by landlord against sub-tenant of tenant for ejectment without impleading tenant-Tenant made party after period S 22 N 5 (i) Suit by one of several joint promisees without impleading other joint promisees — Such joint promisees added after limitation—Whole suit, if becomes barred ...

(i) Suit by one of two heirs of a deceased Mohamedan to recover deht due to estate - Other heir added after period of limi.

(1) Suit to recover debt due to joint promisees-One or more of them impleaded after limitation-Whole suit must fail ...

(a) Daughter claiming under will sning to recover properties

tation-Whole suit, if hecomes barred

.... Necessary party-Who is ...

-New party

Substitution or addition of new parties—New party—(Contd.)	
(b) Debutter estate made party but not properly represented —	
Amendment adding proper representative - Whether addi-	
tion of new party	S 22 N
(c) Erroneous supposition by bona fide mistake that plaintiff	
should be represented in a particular way-Plaintiff subse-	
quently permitted to rectify mistake and appear personally	
-Whether amounts to addition of new party	S 22 N
(d) Estate or person not properly represented in suit—Addition	5 22 2.
of proper representative—Effect of	S 22 N
	וא בע כו
(e) Major by bona fide mistake impleaded as minor plaintiff—	
Institution of snit by his parent as next friend - Amend-	
ment after limitation to recognize him as major.—Whether	C 00 NT
amounts to addition of new party	S 22 N
(f) Minor neither party plaintiff nor party defendant—Addition	
of minor after limitation will be addition of a new party	S 22 N
(g) Minor suing as major by bona fide mistake	
(1) Application for amendment of mistake made beyond	
time—Whether can be allowed	S 22 N
(ii) Minor attaining majority—Whether can be allowed to	
continue suit	S 22 N
(h) Minor wrongly described as major and impleaded in suit-	
Subsequent discovery of mistake and guardian appointed for	
him-Minor, if a new party within S. 22	S 22 N 8
(i) Suit for recovery of money due on mortgage by widow of	
mortgagee as administratrix of estate of mortgagee for bene-	
fit of his sons — Sphsequent discovery that period of her	
appointment as administratrix had expired before suit —	
Prayer that sons should be added as plaintiffs—Addition, if	
	S 22 N (
(1) Suit on promissory note impleading widow of executant as	D 22
legal representative — Subsequent discovery that son and	
not widow was legal representative—Impleading of son—If	
	S 22 N 6
addition of new party	13 44 41 4
of limitation for with Full months disminstrated on record after expiry	S 22 N A
of limitation for suit—Suit must be dismissed New relief claimed by party	0 22 11 0
(a) New party allowed to put forward new facts on which to	S 22 N S
rest the case—Such amendment, if within S. 22	522
(b) Party on record allowed to set up new facts or new cause of	S 22 N S
action—Whether amounts to adding a new party	13 24 21 4
Non-joinder	
(a) Of necessary parties	
(1) Defendant's failure to object to - Decree in favour of	S 22 N 23
plaintiff, if can be passed (ii) Objection as tn—Objection raised at late stage—Effect	0 22 21
	S 22 N 25
of	5 22 2. 20
Proper stage—Distinction as to effect	S 22 N 25
(c) Of proper but not necessary parties—Objection raised at	5 22 21
late stage—Effect of	S 22 N 25
	S 22 N 2
	2 -2 -1
Original party having an right to sne—Addition of person having	S 23 N 6
such right—Whether amounts to addition of new party	5 22 11 5

Substitution or addition of new parties—(Contd.)	
Parties in representative character	
(a) Manager of joint Hindu family, party to snit. Addition of	
other members.—Whether amounts to addition of new par-	
ties within S. 22	S 22 N 11
(b) Person already properly represented on record by another—	
Subsequent addition of name in plaint is not addition of	
new party	S 22 N 10
(c) Person who had not obtained letters of administration neces-	
sary to sue in representative character instituting suit-	
Impleading of person with such letters after limitation—	~ ~ ~ ~ ~
Surt, if harred	S 22 N 11
(d) Representation should be valid and perfected at the time of suit, to fall within S. 22	0.00 37 44
	S 22 N 11
(e) Suit by member of joint family and not by manager—Addition of other members amounts to addition of new parties:	S 22 N 11
(f) Suit by promisee against one of legal representatives of the	5 22 N 11
executant for decree against assets of executant in his hands	
-Such defendant in possession only of a portion of such	
assets—Persons in possession of ather portions of assets im-	
pleaded after period of limitation.—Suit as against such per-	
sons, if harred	S 22 N 11
(g) Suit by trustee or shebait of idol suing as executor or adminis-	
trator of estate-Joinder of heneficiaries-Whether amounts	
to addition of new parties	S 22 N 11
Party once discharged and subsequently reinstated—Whether party	
only from date of reinstatement	S 22 N 5
Person added as party on application made for the purpose-Addi-	
	S 22 N 26
Person intended to be sued described correctly—Plaintiff finding	
subsequently that such person was not liable in answer his claim	
-Whether a case of misdescription	5 22 N 10
Persons whose right to sue or he sued has already become harred-	
Whether can be added or substituted as parties to an action	S 22 N 13
Plaintiff not entitled to relief against newly added defendant and	
not claiming any-Relief claimed against existing defendants	
capable of heing granted independently-Addition of new parties	
after limitation—Whether affects suit as against existing defen-	
dants	S 22 N 15
Pre-emption suit-All vendees not made parties in time-Whole	
suit, when fails	S 22 N 20
Proceedings against newly added defendants—When can be deemed	S 22 N 26
Proper but not necessary party added after limitation.—Suit as	5 23 N 26
against other defendants, if becomes barred	S 22 N 5
•	D 22 N 0
Proper party (a) It is not necessary that any relief should be asked against	
him	S 22 N 16
(h) Newly added party not necessary party but only proper party	11 10
-Limitation, if can be claimed in respect of entire suit	S 22 N 15
(c) Newly added party only proper party Question of limitation,	
if arises as regards him	S 22 N 15
(d) Object of adding proper parties	S 22 N 16

Substitution or addition of new parties—Proper party—(Contd.) (c) Suit by manager of joint Hinda family for rent due io respect	
of family property-A member of the family added as co-	
plaintiff after period of limitation—Additioo, if of new party	
within S. 22	S 22 N
(f) Who is	S 22 N 1
Provisions as to	
	S 22 N
	S 22 N
. 68, Provincial Insol.	
vency Aet	S 22 N 4
-Provisions of S. 22, if apply to cases in which the action was origi-	C 00 N
nally constituted properly as to parties	S 23 N 9
- Question of limitation to be considered after addition or substitu-	C 00 17 19
tion of parties	S 22 N 13
-Questions as to effect of addition or substitution on the whole suit	
to be decided with reference to nature and frame of suit and law	C 02 17 16
of parties relatiog thereto	S 23 N 13
——S. 22 refers only to parties subsequently added	S 22 N 18
Substitution of person in whom interests of a party devolve or to	
whom they are assigned during suit—Whether amounts to addi-	05
tion or substitution of new party within S. 22	S 22 N 27
Substitution only to correct misdescription-Whether amounts to	
additioo or substitution of new party	S 22 N 6
Substitution or addition owing to assignment or devolution of any	G 00
interest during suit or to transposition of parties-Effect of	S 22
Suit as against newly added defendant-When to be deemed to	C 00 N 8
have been instituted	S 22 N 5
Suit by benamidar-Impleading of real owner after limitation-	S 22 N 6
Suit, if becomes infructuous	5 23 N
—Suit by executor for recovery of possession of lands belonging to	
the deceased—BeneGeiaries under will substituted for executor	S 23 N 5
after limitation—Suit, if barred by S. 22	0 22 10
——Suit by insolvent in his own name—Impleading of Official Assignee after limitation as plaintiff——————————————————————————————————	S 22 N 6
—Suit by or against clubs—Club succ	
names of members after time—Wi	
oow parties	S 23 N 21
-Suit for redomption impleading only some of the mortgagous-	
Addition of other mortgagees after limitation—Whole suit to be	
dismissed	S 22 N 17
-Suit not as manager of joint Hindu family-Addition of other	
members-Whether amounts to addition of new parties within	
Section 22	S 22 N 11
Suit or appeal by or against dead person	
'And after	~ ~~ ** **
	S 22 N 12
· · · · · · · · · · · · · · · · · · ·	0 00 N 10
parties—Lilect of	S 22 N 13
(c) Passagai Dialet an be amended by	S 22 N 12
(d) I some capacity—	0 22 11 12
n persons as legal	S 22 N 12
representatives of the deceased	12

GENERAL IRDIA	9099
Substitution or addition of new parties—Suit or appeal by or $person$ — $(Contd.)$	against dead
(e) Legal representatives necessary parties to suit—Their addition after period of limitation—Whether will entail dismis-	
sal of whole suit	S 22 N 12
	S 22 N 12
suit proceeded with (b) Whether can be amended by bringing legal representatives of	S 22 N 12
such deceased person on record	S 22 N 12
in conflict with rights of plaintiff—Whether can plead limitation on the ground that suit should be deemed to have been instituted	8 88 M og
against him only on date he was impleaded	S 22 N 27
(a) Court has discretion to refuse to allow transposition where by doing so a valuable right of the defendant would be affected	S 22 N 29
(b) Date of suit is date of its institution as regards party transposed	S 22 N 29
(c) Defendant transposed as plaintiff, whether a new plaintiff (d) Plaint claim enhanced by transposition—Whether ground	S 22 N 29
 against operation of S. 22, sub-s. 2 (e) Promissory note in name of benamidar—Suit by beneficial owner on note making benamidar a defendant—Benamidar, 	S 22 N 29
if can be allowed to be transposed as plaintiff (f) Question of limitation, if arises in a case of transposition (g) Rule as to	S 22 N 29 S 22 N 29
(i) If subject to any qualifications (ii) Whether can be availed of only where plaintiff and	S 22 N 29
defendant to be transposed have joint cause of action (iii) Whether extends to case of transposition of defendant or the only rightful plaintiff when original plaintiff	S 22 N 29
has no right to sue at all (h) Section 22, if applies . (i) Suit by assignee from Official Receiver of claims to damages in favour of insolvent—Objection that claims not being	S 22 N 29 S 22 N 5
assignable plantiff had no right to sue—Official Receiver, pro forma defendant, if can be transposed as rightful plain, tiff after limitation	S.22 N 29
sharer a defendant—Transposition of latter as plaintiff— His share of rent also, if can be claimed in suit (k) Transposition of person from category of defendant to that of plaintiff—Transposition having effect of bringing on record new plaintiff with cause of action and relief entirely dif- ferent from that in original plaint—Whether sayed by	S 22 N 29
S. 22, sub-s. 2 (1) Value of suit exceeding jurisdiction of Court on transposition	S 22 N 29
—Court should return plant to be presented to proper Court: (m) Whether amounts to addition or substitution of parties	S 22 N 29 S 22 N 7
"When he was so made a party" in S. 22—Meaning of	S 22 N 26

Succession Act	
Appeal under, to High Court-Limitation	. A 156 N 3
- Sections 295, 296-Proceedings under - Whether suits	S 2 Cl 10 N 1
-Sections 360 or 361 - Suit under, to compel refund of legacy of	r
distributed assets—Limitation	A 43, A 43 N 2
Successive wrongs	
-Fact that party has not availed himself of earlier cause of action	. S 23 N 20
whether prevents him from availing himself of a later one	S 23 N 20
— Meaning of	
 Person appropriating for himself without any right daily surpluincome from offerings made to temple—Snit by shehait, ten year 	
after he had begun to do so, for declaration that plaintiff wa	
entitled to the income—Fresh actionable wrong, if committed or	n
each occasion income was received and wrongfully appropriated	
Plaintiff's suit for perpetual injunction restraining defendant from	
discharging rain water on the roof of plaintiff's shop through	
parnala—Plaintiff, if gets fresh cause of action on each occasion	n S 23 N 20
defendant so discharges rain water Suit	. 5201120
By insolvent—Dismissal of—Provision for	. A 172 N 2
-Claims in, independent and capable of being split up-Must be	
regarded as a separate suit as regards each claim	. S 2 Cl 10 N 1
-Conversion of, into execution application-Limitation, how com	
puted ,	. 83 N 332
——Declaratory suit	
(a) Adjudication by civil Court deciding against defendant—Sub	
sequent denial of plaintiff's title, whether gives fresh cause of action	
(b) By adopted son to impeach alienation by adoptive mother	r
before adoption-Suit, whether one for declaration	
(e) By creditor of ancestor or testator against alience from	
devisee or heir for declaration that alienation is void and for consequential relief—Limitation	
for consequential relief—Limitation (d) By donor to declare gift invalid—Limitation	4 4 00 37 91
(e) By junior member of Malabar tarwad for declaration that	
alienation by Karnavan is not hinding on tarwad-Limi	
tation—Starting point (f) By landlord against tenant after order of Revenuo Court can	. A 120 N 36
celling notice of ejectment—Limitation—Starting point	
(g) By reversioner : See under Reversioner	
All and the second second section is a second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second second secon	A 120 N 31
	. A 120 M 31
are—Limitation	. A 120 N 31
(1) For declaration brought after testator's death that mutation	1
in favour of defendant is wrong and does not affect right	
of plaintiff—Limitation—Whether Limitation Act, Art. 120 or Punjab Limitation (Custom) Act, Art. 1, applies	A 120 N 31
(k) For declaration of heirship to a Hindu—Limitation—Start-	
ing point	. A 120 N 31
(1) For declaration of plaintiff's right to office and for possession	A 124 N 5
-Limitation	

-	GENERAL INDEX	3037
Suit-	-Declaratory suit-(Contd.)	
	(m) For declaration of plaintiff's right to receive yeomiah allow-	
	ance—Limitation	A 120 N 39
	(n) For declaration of plaintiff's title to office and for recovery	
	of emoluments thereof—Limitation (o) For declaration of proprietary rights in land under C. P.	A 124 N 5
	Land Revenue Act, S. 88—Limitation	A 120 N 31
	(p) For declaration of right as to property attached under Crimi-	
	nal P. C.—Limitation—Starting point	A 120 N 11
	(q) For declaration of right to graze cattle over certain lands-	
	Burden of proof (r) For declaration of right to immovable property—Suit by	A 120 N 31
	Hindu or Mahomedan who is entitled to possession on death	
	of limited owner.—When maintainable—Limitation	A 141 N 3
	(s) For declaration of right to joint family property-Maintain-	
	ability	A 127 N 13
	regarding which declaration is required—Limitation, statute	
	of, whether does not apply	A 120 N 31
	(u) For declaration of title to property	A 120 N 31
	(v) For declaration on ground of pre-decree compromise that	
	decree-holder is barred from executing decree—Limitation:	A 120 N 31
	(w) For declaration that alleged will is forgery—Limitation	A 120 N 20
	(x) For doclaration that allotment by Collector under Bengal Estates Partition Act is not legally valid—Limitation	A 120 N 31
	(y) For declaration that decree is not binding on plaintiff—	A 120 N 51
	Limitation—Starting point	A 120 N 22
	(z) For declaration that defendent has fraudulently procured entry of his name in revenue records and that plaintiff	
	entry of his name in revenue records and that plaintiff	A 120 N 23
	alone is entitled to succeed to property—Limitation (z¹) For declaration that execution sale in contravention of Ben-	A 120 M 25
	gal Tenancy Act, S. 158, is illegal and inoperative	
	Limitation	A 120 N 31
	(z2) For declaration that Government has no right to collect	
	water cess-Limitation-Starting point	A 120 N 31
	(z³) For declaration that mortgage executed by trustee of temple	
	property is fraudulent and not binding on temple—Limi-	A 120 N 23
	(24) For declaration that plaintiff is entitled to office—Limi-	22 220 21 20
	tation	A 124 N 5
	(z5) For declaration that property in possession of father is	A 100 N 91
	partible after his death—Limitation	A 120 N 31
	(z ⁴) For declaration that property is not liable to attachment— Limitation	A 120 N 31
	(27) For declaration that sale by trustee is invalid-Suit, whether	
	one for possession within Art. 134	A 134 N 3
	(z ⁸) For declaration that sale is frandulent—Limitation	A 120 N 31
	(zº) For setting aside will—Limitation	A 120 N 31
	(z10) Limitation	
	(1) For snit not governed by Articles 11, 11-A, 92, 93, 118, 119, 125	A 120 N 31
	(ii) Starting point	
	(iv) partered Lane	

0000	
Succession Act	
-Appeal under, to High Court-Limitation	A 156 N 3
	S 2 Cl 10 N 1
—Sections 360 or 361 — Snit under, to compel refund of legacy distributed assets—Limitation	or A 43; A 43 N 2
Successive wrongs	
Fact that party has not availed himself of earlier cause of action whether prevents him from availing himself of a later one	S 23 N 20
Meaning of	S 23 N 20
—Person appropriating for himself without any right daily surplineome from offerings made to temple—Suit by schoats, ten yes after he had begun to do so, for declaration that plaintiff wentitled to the income—Fresh actionable wrong, if committed each occasion income was received and wrongfully appropriated.	rs as on
— Plaintiff's suit for perpetual injuoction restraining defendant from discharging rain water on the roof of plaintiff's shop through	m
parnala-Plaintiff, if gets fresh cause of action on each occasi-	on S 23 N 20
Suit .	A 172 N 2
—By insolvent—Dismissal of—Provision for —Claims in, independent and capable of being split up—Must	
regarded as a separate suit as regards each claim	S 2 CI 10 N 1
Conversion of, into execution application—Limitation, how conversed	·S 3 N 33a
Declaratory suit	
(a) Adjudication by civil Court deciding against defendant—Su sequent denial of plaintiffe title, whether gives fresh cau	130 37 91
of action (b) By adopted son to impeach alienation by adoptive moth before adoption—Suit, whether one for declaration	
(c) By creditor of ancestor or testator against alience fro devisee or heir for declaration that alienation is void as	nd
for consequential relief—Limitation	A 120 N 44 A 120 N 31
(d) By donor to declare gift invalid—Limitation (e) By juntor member of Malabar tarwad for declaration the alteration by Karnavan is not hinding on tarwad—Lim	at '
tation—Starting point	A 120 N 30
(f) By landlord against tenant after order of Revenue Court ca celling notice of ejectment—Limitation—Starting point (g) By reversioner: See under Reversioner	n. A 120 N 31
(h) Denial by defendant of plaintiff's right—What is, compete to start time running—Illustrative cases	nt A 120 N 31
(i) For ascertaining what the titles of parties over lands in mak	A 120 M 51
(1) For declaration brought after testator's death that mutati in favour of defendant is wrong and does not affect right	ts
of plaintiff—Limitation—Whether Limitation Act, Art. 1: or Punjab Limitation (Costom) Act, Art. 1, applies	A 120 H 51
(k) For declaration of hership to a Hmdu—Limitation—Star	t. A 120 N 31
(1) For declaration of plaintiff's right to office and for possossi —Limitation	on A 124 N 5

(25) For declaration that property in possession of father is partible after his death-Limitation A 120 N 31 (z6) For declaration that property is not liable to attachment --Limitation A 120 N 31 (z7) For declaration that sale by trustee is invalid-Suit, whether A 134 N 3 one for possession within Art. 134 (z8) For declaration that sale is fraudulent-Limitation A 120 N 31 A 120 N 31 (zº) For setting aside will.—Limitation • • • • (z10) Limitation (1) For suit not governed by Articles 11, 11.A, 92, 93, 118, 119, 125 A 120 N 31 (ii) Starting point ... A 120 N 31 ... • • •

Suit—Declaratory suit—(Contd.)	
(z11) Plaintiff holding occupancy land—Application by plaintiff	
to Collector under Bombay Land Revenue Code, S. 63, for	
grant of occupancy of the land on ground that land is allu-	
vial-Collector disposing of the land to another person	
holding that land is not allovial-Snit by plaintiff for decla-	
ration that order is null and void—Limitation	A 120 N B
(z12) Plaintiff seeking further relief than mere declaration —	
Limitation	A 120 N 31
(z13) Rehef in declaratory suit dependent upon another relief	
which is time barred, whether can be obtained	A 125 N 19
(z14) Successive denials of plaintiff's right — Whether furnish	A 200 NT 91
successive causes of action	A 120 N 31
(z15) Time, whether runs from date of plaintiff's knowledge of	A 120 N 31
denial of defendant's right	A 120 K 31
(z16) To declare plaintiff's rights—Anything in Land Registration	A 14 N 2
Act, whether precindes declaratory suit (z12) To declare that appointment of member of Temple Com-	V II W 7
mittee under Act 20 of 1863 by order of District Judge	
was invalid and for injunction to restrain him from per-	
forming duties of committee member—Suit, whether really	
one for setting aside order	A 13 N 1
(z ¹⁸) To declare that defendant is not son of a particular person—	
Limitation	A 120 N 31
(z18) To declare that defendants are not permanent tenants of a	
field and that order of revenue officer that defendants are	
such tenants is incorrect—Limitation	A 120 N 8
(z20) To declare that forfeiture of plaintiff's lands attached for	
arrears of revenue under Bombay Land Revenue Code was	
illegal—Limitation	A 15 N 1
(z21) To have Municipal election declared void and contrary to law	
—Limitation	A 120 N 31
(z ²²) To impeach, whether necessary in respect of act void or	A 125 N 19
illegal from its very inception	A 120 M 10
(223) Under Bengal Tenancy Act, S. 111-A	
(1) For declaration that plaintiff is labbiraj raiyat and not liable to pay rent—Limitation—Starting point	A 120 N 50
(ii) Limitation—Starting point	A 120 N 50
(z ²⁴) Where other unnecessary, superfluous or premature reliefs	
are also asked—Limitation	A 120 N 31
(z25) Where suit which really is one for declaration is framed as	
one for possession—Limitation	A 120 N 31
(z ²⁶) Whether one for possession	A 135 N 3
(z ²⁷) Whether suit is one for mere declaration or for other relief,	A 120 N 31
how to ascertain	A 120 M ST
- Dismissal for default Restoration Suit, if only continuation of old suit	S3N32
	0010-
- Dismissal of	
(a) O1 -/ 1:!! A!	S 3 N 35
(a) On ground of limitation	S 3 N 35
(b) Setting aside - Application for, by assignee or receiver of	
(b) Setting aside — Application for, by assignee or receiver of insolvent	. 179 N S
(b) Setting aside — Application for, by assignee or receiver of insolvent	; A 172 N 3 A 172 N 2
(b) Setting aside — Application for, by assignee or receiver of insolvent	; A 172 N 3 A 172 N 2

S3N5

...

Suit_(Contd.) -For compensation for act not actinuable without special damage (a) Act done by local authority in pursuance of statutory powers -Starting point under Art. 2 will be postponed to the time when mury results . . S 24 N 1 (b) Action for slander, whether within S. 24 S 24 N 1 (c) Application under S. 235, Companies Act, for compensation for misfeasance of directors-S. 24, if applies S 24 N 1 (d) Effect of S. 24 on Art. 36 S 24 N 1 (e) Limitation to be computed from the time when the injury results S 24 (f) One person entrusting money with another to be paid by the latter to the former's mortgagee - Failure to pay within a reasonable time-Cause of action for compensation arises when damages are suffered S 24 N 2 (g) Owner of sub-soil digging coal without causing any immediate apparent injury to surface -Surface ultimately subsiding-Suit by owner of surface-Limitation runs from time of subsidence S 24 (h) Plaintiff's trap dashing against road gravel heaped owing to wrongful omission of defendant District Board-Plaintiff injuring himself and having to get his leg amputated subsequently-Suit for damages-S. 24 does not apply S 24 N 1 S 24 N 2 S 24 N 3 ••• S 24 N 5 ults isfeasance S 24 N 1 ences ... For declaration of recurring right-Limitation A 102 N 3 ••• -For price of food or drink sold by keeper of hotel, tavern or lodging house-Limitation ••• A 8 -For price of lodging A9N1 (a) Cause of action, when price becomes payable (b) Distinguished from suit for rent A 9 N 1 : A 110 ••• (c) Limitation A9N1 -For recovery of gharwara dues-Limitation A 120 N 39 -For wages-See under Wages. Institution of (a) After expiry of period of limitation-Effect (b) After time-Delay, if can be excused S5N3FN1 (c) By pauper, when effected S 3 Later Policef S3N5 1 of S3N5 institution

(g) Plaint re-presented in another Conrt—Effect ... (b) Presentation of plaint by duly anthorized person — Necessity of S 3 N 5 (1) Presentation of plaint in manner prescribed by Civil Procedure Code—Necessity of S 3 N 5 (1) Presentation of plaint in Court having no jurisdiction —

(f) Delay in filing certificate noder Pensions Act—Effect

Effect S3 N 5
(k) Presentation of plaint with insufficient court-fee, if valid S3 N 5

...

...

83 N 5 83 N 5

•••

...

Suit-Institution of-(Contd.)

(l) Presentation of valid plaint, necessity of (m) Presentation, when made to proper officer

(Nile to continue to proper amount of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the contract of the con
(n) What constitutes S 3 Expl; S 3 N 5 (o) When effected S 3
(o) When effected S3
(a) Absence of special provision—Residuary provision A 120
(h) Ceneral (h) Ceneral
(1) Claim capable of being divided into parts — Suit, if to
be regarded as separate out in respect of each part for
purposes of limitation S 3 N 4
(11) Suit comprising ceveral reliefs — If to be treated as
separate suit for each such relief for purposes of limi-
tation S 3 N 4
—Meaning of S 2 Cl 10; S 16 N 2; A 84 N 3
(a) Appeal, if suit S 2 Cl 10 N 1
(b) Application by Official Assignee for recovery of money due
from dehtor to insolvent's estate - Whether equivalent to
suit for purposes of limitation S 3 N 26
(c) Application for execution of decree if suit S 2 Cl 10 N 1
(d) Application under O. 9 R. 13, Civil P. C., if suit S 2 Cl 10 N 1
(d) Application under O. 9 R. 13, Civil P. C., if suit S 2 Cl 10 N 1
S3N4
S 2 Cl 10 N 1
S 2 Cl 10 N 1
(i) Claim against company in inquidation not made by presentation of plaint, if suit S 3 N 4; S 3 N 13
(1) Claim against company in voluntary liquidation made by pro-
ceedings not instituted by presentation of plaint, if suit S 2 Cl 10 N 1
52 Cl 10 N 1
S 2 Cl 10 N 1
whether suits A 13 N 2
(n) Proceedings under Succession Act, Sz. 295, 299, if suits S 2 Cl 10 N I
-Party to-Death of-Effect of A 172 N 2
Proceeding other than suit-What is : See also under Proceeding: A 13 N 2
-Representative suit - Whother abates A 171 N 2
-Restoration of - Application to restore suit dismissed for default
not falling under Civil Procedure Code, O. 9 R. 8—Limitation A 181 N 15 —Revision application, whether suit A 177 N 2
Revival of Application to revive suit already dismissed Limitation A 181 N 15
To recover property—What is A 47 N 7
Whether includes appeal within O 21 R 11 Civil P C A 172 N 2
—Whether includes application A 13 N 2
Withdrawal of Institution of front suit Limitation for letter
suit, how computed 83 N 34
Summons
—Due service of—What is A 164 N 5
-Frandulent suppression of Decroe obtained by - Suit for setting
aside decree on ground of fraud, whether lies A 95 N 6
-Meaning of, within Art. 164 A 164 N 6
-Non-service of-Whether ground for suit for setting aside decree: A 95 N 6

General Index	3041
Surety	
	A 82 N 1
- For debt due on promissory note-Snit against-Limitation .	A 73 N 2
For instalment bond with default clause-Snit against-Limitatio	
—Starting point	A 75 N 14
For judgment-debtor	1 171 37 4
(a) Whether can plead uncertified adjustment made by him (b) Whether can plead uncertified payment made by him	
In respect of mortgage debt	. 411111
(a) Payment by surety to creditor	
(1) Remedies of surety in respect of principal debtor	. A 81 N 6
(ii) Suit by surety to onforce promise to indemnify implie	
by virtue of Contract Act, S. 145—Limitation (iii) Suit by surety to enforce rights under Contract Act	
S. 145—Limitation	. A 81 N 6
- Joint promisor of promissory note, whether eurety for the other	
Liability of	
(a) Extent of	
(b) Snit to enforce, against surety who has guaranteed paymen	
of amount borrowed by debtor—Limitation (c) Where lessee continues in possession after expiry of lease for	. A 115 N 3
fixed term	
-Meaning of	1 04 5578
- Of mortgagor-Suit against-Whether one to enforce payment of	
money charged on immovable property within Art. 132	
Rights of	
(a) Against co-surety before payment by surety in excess of but share of debt due	. A82 N 2
(b) Whan creditor's rights against principal debtor is barred by	
limitation	
——Suit against	
(a) By creditor—Limitation	
(b) Limitation—Starting point (c) Whether barred merely by reason that principal debt is barred	
under Art. 59	
(d) Whether one on the loan	4
-Suit by	
(a) Against co-surety and creditor where plaintiff is threatened	
by creditor with action for more than his share of debt due -Snit to obtain order upon co-snrety to pay his proportion	
to creditor—Limitation	A 82 N 2
	82; A 82 N 1
(c) Against principal debtor	
(i) By surety who does not himself pay the creditor but is	
compelled to make contribution to co-surety who has paid the creditor—Limitation	A 81 N 3
(11) Limitation—Starting point A	81; A 81 N 5
(iii) To enforce rights which anrety acquires under Con-	
tract Act, S. 140, by paying to creditor-Limitation:	A 81 N 1
Tax	1 100 N 10
— House tax—Suit for, by municipality—Limitation Latrine tax—Snit for, by municipality—Limitation	1 100 37 40
	A 120 N 43
•	Lim. 191

0010		0.221.22.22				
Sult-	Institution of -(Contd.	.)				
	(1) Presentation of valid		ssitv nf			S3 N 5
	(m) Presentation, when a					S3 N 5
	(n) What constitutes	•••		•••	S 3 Ex	pl;83N5
	(o) When effected			•••	•••	83
]	Limitation for					
	(a) Absence of special pr	ovisim—Re	siduary pr	ovision		A 120
	(b) General					
	(i) Claim capable	nt being divi	ded inta p	arts — Su	it, if to	
	be regarded a				part for	0.037.4
	purposes of li	mitation	,,,, · · ·		.4.3	S 3 N 4
	(ii) Suit comprisin	g several re	liels — 1	t to be tre	ated as	
	separate suit	ior each suc	n rettet to	r purposes	oi iiiii-	S3N4
,	tation Meaning of	•••		g g (I) 10	S 16 N 2	
	(a) Appeal, if suit	•••		5 2 01 20	82	CI 10 N 1
	(b) Application by Offic	ial Aggienea	for recov	ery of mar		•••
	from debtor to inso	lvent's estat	e — Whe	ther equive	lent to	
	suit for purposes of	limitation	•••	***	***	S 3 N 26
	, , , , , , , , , , , , , , , , , , ,				S 2	CI 10 N 1
			٠.	•	S 2	Cl 10 N 1
				•	ersuit: S 2	Cl 10 N 1
		•			***	S3N4 Cl 10 N 1
	•				, 52	Ol 10 N 1
						01 10 11 1
	(1) Ulaim against compa tion of plaint, if su		ation not i	nade by pr	9314	; S 3 N 13
	tion of plants, it su		· hanida	tion made		,
				plaint, if s	nit S2	CI 10 N 1
				if suits	S 2	Cl 10 N 1
	(I) Proceedings under E	engat Lenan	cy Act, S.	158, if suit		Cl 10 N 1
	(m) Proceedings under P	residency St	nall Canse	Courts Act	. Ch. 7.	A 13 N 2
	whether suite	•••			. ""	Cl 10 N 1
	(n) Proceedings under S		t, Ss. 295,	299, if sui	ts 52	A 172 N 2
	Party to—Death of—Effe		· ·		•••	A 13 N 2
	Proceeding other than sui		See also t	inder Proce	eding:	A 171 N 2
	Representative suit - Whe	ther abates		missed for	default	A Alazi
_				8—Limitat	ion A	181 N 15
_			, 14.		•••	A 177 N 2
	•		aire	ady dismis	sed —	
	Limitation		•••		/	181 N 15
_	To recover property-Wh	at is			•••	A 47 N 7 A 172 N 2
_	Whether includes appeal	within O. 21	R. 11, Ci	vil P. C.		A 13 N 2
_	-Whether includes applicat	ion		2 15 5	. latter	
_	 Withdrawal of — Institut suit, how computed 	ion ni tresh	sutt — Lin	nitation to	1 autor	g 3 N 34
Sur	amons	•••	•••	•••	•••	
	-Due service of-What is					A 164 N 5
	Fraudulent suppression of	Danson -h	tained be	_ Suit for	•••	
	nside decree on ground o	frand who	ther lies	- 5011 101	***	A 95 N 6
	Manning of the ground of		1100			a 164 N 6

-Non-service of-Whether ground for suit for setting aside decree:

-Meaning of, within Art. 164...

A 164 N 6

A 95 N 6

Sprety	
Co-surety-Right of contribution between-Basis of	. A 82 N 1
For debt due on promissory note-Suit against-Limitation	
For instalment bond with default clause-Snit against-Limitation	1
—Starting point	. A 75 N 14
For jndgment-debtor	
(a) Whether can plead uncertified adjustment made by him	. A 174 N 4
(b) Whether can plead uncertified payment made by him	. A 174 N 4
In respect of mortgage debt	
(a) Payment by surety to creditor	
(1) Remedies of surety in respect of principal debtor	A 81 N 6
(11) Suit by surety to enforce promise to indemnify implied	
by virtue of Contract Act, S. 145-Lamitation	. A 81 N 6
(in) Suit by surety to enforce rights under Contract Act,	
S. 145—Limitation Joint promisor of promissory note, whether surety for the other	. A 81 N 6 . A 81 N 2
	A OI N 2
——Liability of (a) Extent of	A 110 N 10
(a) Extent of (b) Suit to enforce, against surety who has guaranteed payment	
of amount horrowed by debtor—Limitation	A 115 N 3
(c) Where lessee continues in possession after expiry of lease for	
fixed term	1 *** ****
—Meaning of	A 81 N 2
-Of mortgagor-Suit against-Whether one to enforce payment of	
money obarged on immovable property within Art. 132	
Rights of	
(a) Against co-surety before payment by surety in excess of bis	
share of debt due	A 82 N 2
(b) When oreditor's rights against principal debtor is barred by	
limitation	A 81 N 4
——Suit against (a) By creditor—Limitation	A 83 N 10
(a) By creditor—Limitation (b) Limitation—Starting point	
(c) Whether barred merely by reason that principal debt is harred	
under Art. 59	A 59 N 3
(d) Whether one on the loan	A 59 N 3
Suit by	
(a) Against co-surety and creditor where plaintiff is threatened	
hy creditor with action for more than his chare of debt due	
-Snit to obtain order upon co surety to pay his proportion	
to creditor—Limitation	A 82 N 2
(b) Against co-surety for contribution—Limitation A (c) Against principal debtor	82: A 82 N 1
(i) By surety who does not himself pay the creditor but is	
compelled to make contribution to co-surety who has	
paid the creditor—Limitation	A 81 N 3
(ii) Limitation—Starting point A	81: A 81 N 5
(iii) To enforce rights which snrety acquires under Con-	
tract Act, S. 140, by paying to creditor—Limitation:	A 81 N 1
Tax	
— House tax—Suit for, by municipality—Limitation	
-Latrine tax—Suit for, by municipality—Limitation	A 120 N 43 A 120 N 43
Money due as-Suit for-Limitation	
	Lim. 191

Tax-(Contd.)						
	ax under Town 1	mproveme	nts Act—Re	ecovery of-	Suit	
for-Limit		***	•••		•••	A 120 N 43
Property to	x-Recovery of	_Limitation	on-Under	Madras Dis	trict	-
. Municipali				•••		A 132 N 2
-Statutes of-		betber exer	not from st	atutes of tax	es	A 149 N 3
- Taxes illegal	lly collected_Re	ecovery of-	-Suit for -	- Limitation	a	
	t. 16 and general				•••	A 62 N 23
Terminal ta	x-Recovery of-	-Snit for.	by Municip	ality Lin	ita.	
tion				***	•••	A 120 N 43
Tenancy						
Determinati	on of					
	andonment		• • •	•••		A 139 N 10
(b) By for		•••		•••		A 139 N 9
(c) By no	tice to quit			•••	•••	A 139 N 7
(d) By su						A 139 N 8
(e) Modes	of-Illustrative	cases	•••	•••	•••	A 139 N 5a
-Forfeithre o	f-Tenancy how	forfeited	• • •		•••	A 143 N 4
-Permanent				•••		
(a) Deteri	mination of—Mo	de of	•••	•••	•••	A 139 N 17
	of, in suit for eje			oof		A 139 N 17
Tenancy at	will—Determina	ation of -M	Iode of	•••		A 139 N 16
Tenancy by	sufferance					
(a) Claim	of landlord again	nst tenant,	when one fo	or rent ***		A 110 N 4
(b) What	is	•••		***		A 110 N 4
-Tenancy for	term of years-	-Determina	tion of—Mo	des of		A 139 N 6
	ht—Whether ca				1	A 139 N 14
Tenant-Sec al:	so Landlord and	tenant.	•	-		
Acquiring ti	itle to property r	nder S. 28	 Limitation 	Act_Suit	by,	
against la	indlord for posses	ssion—Lim	itation	•••	•••	A 139 N b
Acquisition	of higher right	by— Tens	ant after d	etermination	ı of	
tenancy o	claiming to be,pe	rmanent te	nantWhe	ther can acq	uire	
	ull owner after 1			***	•••	A 139 N 11
Alience of-	-Suit against, hy	landlord fo	r possession			
	etermination of			by alienatio	n—	
Suit	nnder T. P. Act,	, S. 111—I	amitation	•••	. •••	A 143 N 5
	ound of breach o	f condition	of non-alien	nation—Lim	ita.	
· tion					3 N 2	2; A 145 N 5
	ound of forfeitur	e by alienat	ion—Limit	ation A 14	3 N 2	2; A 143 N 5
Encroachme	entby		_			
(a) On ad	joining land belor	iging to thir	d party—B	enefit of enci	03	1 100 37 10
. cnm	ent, who receives	3 .		***		A 139 N 19
(D) On ac	ljoining property	of third par	rty—Tenant	, whether ha	DIG	
	ay additional ren	t after nave	erse possessi	on for statut	bry	A 139 N 19
(-) O		m	1			A 100 11 20
	ndlord's property					
	same rights of t	enancy as i	Se DEG OVER	TERRES OF ISTRE	iiiy	A 139 N 19
	ther property of l	landland	•••	•••	•••	
	Tenant, wheth		nive by neg	eription big	har	
(1	title over land					
11 11 11	· nally demised					A 139 N 19
115 of 15 of A 601	Tenant, whethe	r can bresco	ribe to hold	eneroached le	and	
11 H 021 - 12	· without addition	onal liabilit	v for rent		•••	A 189 N 19

Tenant—(Cond.) —Misuse of land by, contrary to terms of kabuliyat—Misuse, whether perversion of property by person who having right to use	
property for specific purposes, perverts it to other purposes	A 32 N 4
Possession of	A 52 H 4
(a) Nature of, after determination of tenancy	A 139 N 13
(h) Nature of, during tenancy	A 139 N 12
(c) Possession of tenant holding over after determination of	
tenancy, whether adverse to laudlord	A 139 N 2
-Sub-tenant required to pay to landlord rent payable by tenant-	
Failure of sub-tenant to pay-Tenant paying off rent - Suit by	
tenant against sub-tenant for re-imbursementLimitation	A 61 N 10
- Suit against, by landlord : See under Landlord	
Tenant-at-will	
(a) And trespasser, distinguished	A 139 N 16
(b) Possession of—Nature of	A 139 N 16
Tenants in common : See also under Co-sbarers.	
(a) Heir of—Suit by, for partition against beir of another tenant-	
in.common—Limitation	A 127 N 6
(b) Suit by, against another tenant in common for recovery of	
money received by latter in excess of his share - Limitation:	A 120 N 28
- Whether can acquire during tenancy any title by prescription	
adverse to that of landlord and inconsistent with real legal rela-	A 139 N 12
tion between them	A 105 N 12
(a) Representative of deceased life tenant, whether tenant	A 139 N 4b
(h) Within Art. 139	A 139 N 4b
	11 200 21 22
Tenure	1 101 17 0
—Meaning of	A 121 N 3 A 121 N 3
Tennre holder_Meaning of	V 131 N 2
Thavanai	
m tr T r r r tr-11	
Deposit on_Interest upon_Limitation	A 63 N 5
——Deposit on—Interest upon—Limitation ——Money invested on—Recovery of —Suit for—Limitation	A 63 N 5 A 115 N 3
Money invested on-Recovery of Suit for-Limitation	
—Money invested on—Recovery of—Suit for—Limitation Title	
— Money invested on—Recovery of—Suit for—Limitation Title Acquisition of	
Money invested on—Recovery of—Suit for—Limitation Title Acquisition of (a) By adverse possession against Government	A 115 N 3
Money invested on—Recovery of—Suit for—Limitation Title Acquisition of (a) By adverse possession against Government	A 115 N 3 A 149 N 9 A 149 N 9
	A 115 N 3
— Money invested on—Recovery of — Suit for—Limitation Title — Acquisition of (a) By adverse possession against Government (i) Burden of proof (ii) Manner of (b) By possession	A 115 N 3 A 149 N 9 A 149 N 9 Preamble
	A 115 N 3 A 149 N 9 A 149 N 9 Preamble A 67 N 7
— Money invested on—Recovery of — Suit for—Limitation Title — Acquisition of (a) By adverse possession against Government (i) Burden of proof (ii) Manner of (b) By possession — Covernant for (a) Breach of — Suit for—Limitation (b) Whether contract of indemnity	A 115 N 3 A 149 N 9 A 149 N 9 Preamble
— Money invested on—Recovery of—Suit for—Limitation Title — Acquisition of (a) By adverse possession against Government (i) Burden of proof (ii) Manner of (b) By possession — Covenant for (a) Breach of—Suit for—Limitation (b) Whether contract of indemnity — Deplayation of—Suit for—Public iii prossession of land recarding	A 115 N 3 A 149 N 9 A 149 N 9 Preamble A 67 N 7
— Money invested on—Recovery of—Suit for—Limitation Title — Acquisition of (a) By adverse possession against Government (i) Burden of proof (ii) Manner of (b) By possession — Covenant for (a) Breach of—Suit for—Limitation (b) Whether contract of indemnity — Declaration of—Suit for—Plaintiff in possession of land regarding which declaration is required—Limitation—Statute of, whether	A 149 N 9 A 149 N 9 A 149 N 9 Preamble A 67 N 7 A 83 N 7
— Money invested on—Recovery of — Suit for—Limitation Title Acquisition of (a) By adverse possession against Government (i) Burden of proof (ii) Manner of (b) By possession Covernant for (a) Breach of — Suit for—Limitation (b) Whether contract of indemnity Declaration of—Suit for—Paintii in possession of land regarding which declaration is required—Limitation—Statute of, whether does not apply	A 115 N 3 A 149 N 9 A 149 N 9 Preamble A 67 N 7
— Money invested on—Recovery of—Suit for—Limitation Title Acquisition of (a) By adverse possession against Government (i) Burden of proof (ii) Manner of (iii) Manner of (b) By possession Covenant for (a) Breach of—Suit for—Limitation (b) Whether contract of indemnity Declaration of—Suit for—Plaintiff in possession of land regarding which declaration is required—Limitation—Statut of, whether does not apply Denial of landlord's title	A 149 N 9 A 149 N 9 A 149 N 9 Preamble A 67 N 7 A 83 N 7
— Money invested on—Recovery of—Suit for—Limitation Title Acquisition of (a) By adverse possession against Government (i) Burden of proof (ii) Manner of (b) By possession —Covenant for (a) Breach of—Suit for—Limitation (b) Whether contract of indemnity —Declaration of—Suit for—Plaintiff in possession of land regarding which declaration is required—Limitation—Statute of, whether does not apply —Denial of landlord's title (a) Forfeiture by—Suit for possession on ground of—Limitation: (b) When amounts to forfeiture	A 149 N 9 A 149 N 9 A 149 N 9 Preamble A 67 N 7 A 83 N 7
— Money invested on—Recovery of—Suit for—Limitation Title — Acquisition of (a) By adverse possession against Government (i) Burden of proof (ii) Manner of (b) By possession — Coverant for (a) Breach of—Suit for—Limitation (b) Whether contract of indemnity — Declaration of—Suit for—Plaintiff in possession of land regarding which declaration is required—Limitation—Statute of, whether does not apply — Denial of landlord's title (a) Forfeiture by—Suit for possession on ground of—Limitation:	A 115 N 3 A 149 N 9 A 149 N 9 Preamble A 67 N 7 A 83 N 7 A 120 N 31 A 143 N 6 A 143 N 6
— Money invested on—Recovery of—Suit for—Limitation Title — Acquisition of (a) By adverse possession against Government (i) Burden of proof (ii) Manner of (b) By possession — Covernant for (a) Breach of—Suit for—Limitation (b) Whether contract of indemnity — Declaration of—Suit for—Plaintiff in possession of land regarding which declaration is required—Limitation—Statute of, whether does not apply — Denial of landlord's title (a) Forfeiture by—Suit for possession on ground of—Limitation: (b) When amounts to forfeiture (c) Whether makes tenant's possession during tenancy adverse to landlord	A 115 N 3 A 149 N 9 A 149 N 9 Preamble A 67 N 7 A 83 N 7 A 120 N 31 A 143 N 6
— Money invested on—Recovery of—Suit for—Limitation Title Acquisition of (a) By adverse possession against Government (i) Burden of proof (ii) Manner of (b) By possession —Covenant for (a) Breach of—Suit for—Limitation (b) Whether contract of indemnity —Declaration of—Suit for—Entity in possession of land regarding which declaration is required—Limitation—Statute of, whether does not apply —Denial of landlord's title (a) Forfeiture by—Suit for possession on ground of—Limitation: (b) Whether makes tenant's possession during tenancy adverse to landlord Less of—Indemnity spainst	A 149 N 9 A 149 N 9 Preamble A 67 N 7 A 83 N 7 A 120 N 31 A 143 N 6 A 143 N 6 A 149 N 12
— Money invested on—Recovery of—Suit for—Limitation Title — Acquisition of (a) By adverse possession against Government (i) Burden of proof (ii) Manner of (b) By possession — Covernant for (a) Breach of—Suit for—Limitation (b) Whether contract of indemnity — Declaration of—Suit for—Plaintiff in possession of land regarding which declaration is required—Limitation—Statute of, whether does not apply — Denial of landlord's title (a) Forfeiture by—Suit for possession on ground of—Limitation: (b) When amounts to forfeiture (c) Whether makes tenant's possession during tenancy adverse to landlord	A 149 N 9 A 149 N 9 Preamble A 67 N 7 A 83 N 7 A 120 N 31 A 143 N 6 A 143 N 6 A 149 N 12

Title-Loss of, indemnity against-(Contd.)	
(b) Express registored covenant for-Breach of -Suit for-	
—Limitation	A 83 N 7
Of parties over lands in mahal Ascertainment of Suit for	
—Limitation	A 120 N 31
(a) In respect of properties relating to which order of Insolvency	
Court left open question of title - Order, whether must be	A 13 N 1
 set aside prior to suit for title (b) Prior order passed under Presidency Small Cause Courts 	N 10 M I
Act, Chap. 7, whether decision or order on question of title	
which must be set aside before sning for title	A 13 N 1
To property-Doclaration of-Suit for	
(a) Government through its officers asserting claim to property	
-Limitation	A 120 N 8
(b) Limitation To property in custodia legis—Declaration of — Suit for — Limi.	A 120 N 31
tation—Starting point	A 120 N 3
Tort	A 120 11 0
Continuing wrong - Fresh period of limitation begins to run at	
every moment of time during which wrong continues	S 23
False imprisonment: See-False imprisonment	
- Joint tortleasors Suit against	
(a) Limitation	A 19 N 3
(b) Nature of suit — Whether action for compensation for con-	
spiracy to cause damage is proper remody	A 19 N 8
- Malicious abuse of process and false imprisonment, distinction	A 19 N 1
Malicious prosecution: See Malicious Prosecution.	A 10 11 2
The second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of the second of th	~*
T 1	S 7 N 28
7	S7N 28
Sevoral persons entitled to sno in respect of tort done to them	01
pointly-Necessary parties to sait for damages	S 22 N 24
-Suit founded upon - Limitation, whether same as limitation	A 116 N 1
applicable to suit founded npon contract — Suit in, for ejectment of tenant—Limitation	A 143 N 2
Wrongful restraint : See Wrongful restraint	21 410 2
Trade-mark	
Infringement of	
(a) Suit for restraining defendant from-Limitation-Starting	
point	A 120 N 10
(b) Whether a continuing wrong so long as infringement conti-	S 23 N 18
nues	2 33 N 10
Transactions Voidable transactions—Illustrations	A 97 N 8
Transfer	7,012.0
By mahant of math-Whother binding on succeeding mahants	A 91 N 10
By trustee of temple-Whether binding on succeeding trustees	A 91 N 10
	V AT IN TO
1 of Valdatile consideration	A 91 M 10
(a) Lease, whether transfer for rabushle consideration within	
(a) Lease, whether transfer for valuable consideration within Art. 134 B	184ABO N 7 184ABO N 7

	0040
Transfer—(Contd.)	
	A 138 N 6 A 95 N 11 A 95 N 8a; A 120 N 23
Nominal transfer, whether transfer within Art. 134	A 134 N 8
Of immovable property by revenue anthorities for arrears of Government revenue—Setting ando—Suit for, against Government—	N 101 N 0
Limitation	A 15
Of property (a) By	
Buddhist	A 44 N 6
law	A 44 N 6
(iii) Whether hinding on minor under Hindu law	A 44 N 6
(iv) Whether hinding on minor under Mahomedan law (h) By guardian	A 44 N 6
(i) Minor having no present interest in property—Suit in	
respect of, hy ward—Limitation	A 44 N 4
(ii) Not as the property of minor but as his own—Setting	
aside, suit for—By minor—Limitation (iii) Transfer binding on ward unless and nntil set aside—	A 44 N 5
Illustrations	A 44 N 3
(iv) Transfer not binding on ward—Illustrations	A 44 N 3
(c) By person other than guardian—Setting aside—Suit for— Limitation	A 44 N 5
(d) Transfer ah 111110 void or otherwise not hinding on plaintiff —Whether need and can be set aside—Remedies of plaintiff;	A 44 N 2
(e) Void transfer	
(i) Consideration paid in respect of—Recovery of—Suit	
for—Limitation	A 62 N 5
(ii) What is	A 44 N 3
(f) When can he set aside	A 44 N 2
—Void in law—Delivery of possession of property transferred in return of money payment—Such transfer, whether existing consi- deration in suit for recovery of money paid on existing considera.	
tion which afterwards fails	A 97 N 3
—Void promise to transfer property in return of money payment —Possession of property under such promise, whether existing consideration in suit for money paid on existing consideration	
which afterwards fails	A 97 N 3
(a) Remedies of person paying such money (h) Suit for	A 97 N 7
(1) Limitation—Starting point	A 97 N 7
(ii) Where in execution of decree by third person with paramount title against plaintiff, such third person is	
formally put in possession of property purchased by	
. plaintiff. Limitation. Starting point	A 97 N 7
Void transfer without possession—Money paid on—Remedies	A 97 N 6

Transfer—(Contd.)	
Voidable transfor	•
(a) With possession-Money paid on-Suit for-Limitation-	
Starting point -Illustrative cases	A 97 N 9
(b) Without possession-Money paid nu-Suit for	
(a)	A 97 N 6
Court	21 01 21 0
oint	A 97 N 8
second .	11 01 11 0
Court reverses it which in its turn is reversed by	
Trial Complete the Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Complete Co	A 97 N 8
(iv) Whether one for money paid an existing consideration	ADIRO
	A 97 N 8
	ASIRO
Transfer of Property Act	
-Section 53	
(a) Alionation voidable under—Setting aside—Suit for—Limita.	
tion	A 91 N 14
(b) Suit under, by creditor defrauded by transfer—Limitation:	A 95 N 8a
-S. 60-Provision of, as to accrual of right of redemption before	
amendment of the Section by Act 20 of 1929	A 148 N 18
——S. 62—Provision of, as to right of redemption	A 148 N 18
8. 68-Suit under, for recovery of money-Limitation	A 82 N 7
——S. 92—Effect of amendment of S. 92 by Act 20 of 1929	A 148 N 3
Section 111-Forfeiture by tenant under-Determination of ten-	
	2; A 143 N 4
-Section 119-Suit under, for possession, on ground of broach of	
condition-Limitation	A 143 N 13
Transferee	
-From Hindu or Muhammadan entitled to possession on death of	
Hindu or Muhammadan female—Suit by, for possession—Limita.	
tion-Starting point	A 141 N 8
-Of execution purchaser-Application by, for delivery of possession	
-Limitation	A 180 N 3
-Of Government - Suit against, for possession on ground that	
plaintiff had acquired prescriptive title against Government-	
Nature of proof so as to bring case under Art. 149	A 149 N 7
Trees	
Price ofSuit for	
(a) For possession of tree standing on defendant's land which	
defendant has sold to plaintiff—Limitation applicable, whe-	
ther same as applicable to suit for price of trees	A 55 N 1
(b) Limitation—Where no fixed period of credit is agreed upon :	A 55
(o) Whether one for price of goods sold and delivered	A 55 N 1
-Standing trees - Whether immovable property	A 55 N 1
Trespass	
-Each act of trospass, if gives new cause of action for proceeding to	
restrain treames	8 23 N 20
Meaning of	A 39 N 2
On property to possession of which another has exclusive right-	
Trespass, if a continuing wrong	S 23 N 16
-Throwing of stones or hallding a wall nr planting posts or rails on	
another's land and leaving them there - Whether a continuing	
wrong	8 23 N 16

GENERAL INDEX	3047
Trespass—(Contd.)	
Upon immovable property	
(a) Compensation for—Snit for	
(i) Against person carrying away crops nn plaintiff's lands	
and converting them to his use-Suit based upon	
conversion or trespass—Limitation	A 39 N 7
(ii) For damages for mischief which trespasser commits	
after entering on the land-Limitation	A 39 N 2
(iii) For mesne profits for period hetween date of institu-	
tion of suit and date of nhtaining ejectment decree	
against defendant—Defendant receiving no profits	
during such period—Claim for mesne profits, whether	-
essentially one for damages for trespass upon immov-	
able property	A 39 N 3
(iv) In absence of proof of plaintiff's possession being dis- turbed—Maintainability	A 39 N 4
(vi) Owner of adjoining coal mine taking coal from under	9; A 39 N 11
plaintiff's land—Relief claimed in respect of coal	
taken and utilized or in respect of trespass—Limitation:	A 39 N 5
(b) Entry above surface of land, whether in itself actionable tres.	11 00 11 0
pass	A 39 N 6
(c) Entry beneath surface, whether actionable trespass	A 39 N 5
(d) Placing things on land, whether trespass	A 39 N 6
(e) Re-entry by owner	
(1) Liability of owner, where re-entry is forcible	A 39 N 8
(ii) Liability of owner, where re-entry is peaceful	A 39 N 8
(f) Seizure of well, whether trespass	A 39 N 9
(g) What is	A 39 N 4
Upon moveable property-Compensation for-Suit for-Limita.	A 39 N 2
Upon person_Compensation for_Suit for_Limitation	A 89 N 2
—Whether continuing wrong	A 89 N 9
Trespasser	
And tenant-at-will, distinguished	A 139 N 16
Trust	
Breach of	
(a) Snit for damages for broach of trust in management of trust	
property—Limitation	A 120 N 4
(b) Suit to make good loss nut nf general estate of deceased	
trustee	
(1) Article 98 and S. 10 distinguished - Whether S. 10	
provails over Art. 98 where suit is covered by both: (ii) Joint family properties of father and sons which pass	A 98 N 1
hy survivorship to sons, whether general estate	- A 98 N 3
(iii) Limitation—Starting point A 98; A 98 N	
(iv) "Loss"—Meaning of	A 98 N 2
(v) Suit against sons to recover loss from joint family pro-	
perty, whether suit within meaning of Art. 98	A 98 N 3
-By operation of law-Whether trust for specific purpose within	~
S. 10	S 10 N 7
- Cestui que trust-Suit by, for recovery of possession of trust	
property against transferoe of trustee for valuable considera- tion—See under Trust.	
tibu—Bee unaer 11ust.	

0.70	GENERALI INDEX			
rnst-	-(Contd.)			
	onstructive trust		- '	
	(a) Money which ought to be received by one, received I	bv		
			S 10	N 7
	(b) Partition between two persons-Debt due from strang			
	allotted to one-Debt received by the other-Latter co			
	structive trustee for former		S 10	N 7
	(c) Whether trust for specific purpose within S. 10		S 10	N 7
	reation of	8	2 Ct 11	N 1
E	nforcement of—Suit for—Limitation		A 120	N 4
	11 6 431 4 1 16 4 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1			N 25
	xpress trust	•••	٠.	11 20
	(a) Created by deposit—Suit for—Limitation		A 60	N 2
	(b) Deposit of money with person etanding in fiduciary relation	n.		
	chip to depositorIntention to yest ownership in deposit			
	-Trust for specific purpose, if created		S 10	N 18
	(c) Deposit of specific moveable property with another for spec	i.		
	fic purpose-Understanding that it must be returned			
	depositor in specie-Depositee, if trustee for specific pu			
	pose		S 10 1	N 19
	(d) East India Company entering into agreement with credito	re		
	of Native Raj to pay them debts-Properties of Raj take			
	over by company-Agreement to eet apart euflicient portion			
	of revenue for payment of debts-Arrangement, if creat-			
	trust for specific purpose	•••	S 10	N 13
		•••	S 10 1	
	(f) Form ofNo particular form necessary to create it .		S 10	
	(g) Illustrations	S	10 N 1	
	(b) Meaning of	••	S 10	N 7
	(1) Alleged trustee must be owner of property to which	:b		
	trust relates—Illustrations	••	S 10	N 9
	(ii) Bridegroom's father making over money at time			•
	betrothal to be kept by the bride's father as fun	d		
	constituting ber dowry—Trust for specific purpose,	11		
	created	••	S 10 I	и та
	(iii) Deposit of money by one person with another—Latte			
	constituted owner of money and entitled to use subject to liability of returning an equivalent sum t			-
	depositor—Transaction, if amounts to trust	.O	S 10 1	J 18
	(iv) Mortgagee in possession after mortgage has been dis		D 10 1	1 10
	charged, if express trustee	,.	S 10 P	J 14
	(v) Obligation arising by operation of law, whether expres			
	trust		S 10 N	T 11
	(vi) Obligation based on confidence raised by implication of	ıέ		
	law—Whether express trust	••	S 10 N	
	7.1000		S 10 N	11
	·	/ -		
	(0.6			3 10
	(i) One person banding over money to another to carry or	п		
	money lending business in his own name but for former	5	S 10 N	110
4			D TO I	13

S 10 N 13

Manual Parament of CO and	
Trust—Express trust—(Contd.)	
(k) Person to whom letters of administration to estate are	
granted — Whether a trustee for a specific purpose	S 10 N 10
(1) Property specifically transferred to person to be held by	
him in trust for idol or religious institution-Trust for	
specific purpose, if constituted	S 10 N 25
(m) Suit against express trustees-Limitation-English law	S 10 N 1
(n) Suit against express trustees and their representatives	B 10 N 1
(1) By one co-trustee against another—Whether within	
S. 10	S 10 N 24
(n) By present trustee against a past trustee-Whether	S 10 N 24
	S 10 N 24
(ui) Limitation	S 10 N 24
(iv) Plaintiff, if must be a beneficiary under the trust for	5 10
henclit of provisions of S. 10	C 10 M 04
	8 10 N 24
(v) Provisions of S. 10—Persons entitled to beneal of (vi) Total exemption from limitation	S 10 N 24
(o) Suit against legal representative of trustee for following in	S 10 N 3
(o) our against legal representative of trustee for following in	
his hands trust property or its proceeds or for an account	0.40.17.0
of such property or proceeds—Limitation	S 10 N 3
(p) Suit against legal representatives and assigns—Assignment	
for valuable consideration—Meaning of	
(1) Gift of temple property in consideration of services to	
be performed—Whether assignment for considera-	0.10.37.01
tion	S 10 N 21
(ii) Whether includes mortgage, lease, exchange and pur-	0.1037.01
chase in execution	S 10 N 21
(q) but for following trust property - rollowing trust property	D 10 37 00
-Meaning of	S 10 N 22
(r) Transfer of property by one to another without declaring	
trust but without intending transfer should be for his	D 10 37 7
benefit—Latter, if express trustee (s) Transfer of property by trustee—Limitation—S. 10 and	S 10 N 7
	A 134 N G
Art. 134 to 134-C, distinguished (t) Transferce of trust property—Suit against—S. 10, applicable.	A 101 N U
(1) Transferee of trust property -out against -c. 10, approach	S 10 N 21
lity of (u) Trust for specific purpose—Meaning of	S 10 N 7
(i) Failure or avoidance of trust and resulting trust in	5,1011
favour of another—Such trust, if for specific purpose	S 10 N 7
(ii) Person purchasing property contracted to be sold to	2.2011
another, with notice of contract—Trust arising by	
operation of law—Whether trust for a specific pur-	
pose	S 10 N 7
(iii) Purposes specified in instrument not adequate to	2 20 21 1
exhaust property transferred in trust—Trust in res-	
peet of the balance, if a trust for a specific purpose:	S 10 N 7
-Invalid trust - Government promissory notes convoyed on -	
Recovery of Suit for Limitation Starting point	A 120 N 4
Legal representative in S. 10, if refers to person succeeding to	
deceased trustee's office as trustee	S 10 N 20
Meaning of	2 Cl 11 N 1
	2 CI 11 N 1
(a) If confined to express trusts (b) Shebait of idol, mahant of mutt and dharmalarta of temple	1, 1
-Whether trustees within S. 10	· S 10 N 6
White transca with a second	Lim. 192
1	192

Trnst_Meaning of_(Contd.)	
. (c) Trust created hat dally revoked - Whether trust within	
S. 10 ·	S 10 N
(d) 'Trust' in S. 10, meaning of	S 10 N
(e) Trustee himself partly entitled to benefit of trust-Trans-	~
action, if a trust	S 10 N
(f) Under Limitation Act	A 134 N
One person transferring property to another in trust for himself	
for purpose of discharging his debts-Transferee, if undor obli-	
gation to hold estate for benefit of transferor's creditors	S 10 N 1
Owner of property must be under obligation to hold it for another's	
benefit	S 10 N 1
	A 120 N
Subject of	
(a) Limited interest in propertyWhether can be subject of a	
trust	S 10 N
(h) Mere right to possession—Whether may be aubject of trust:	S 10 N
-Suit by trustees of mosque against manager for his removal-	
Manager making claim for money due to him-Court finding	
money was due to him-Payment of part of the dues-Appeal	
hy trustees—Suit dismissed for non-joinder of other trustees—	
Manager's auit for recovery of halance due—Period of the prior	
litigation started by truatees, whether can be excluded in com- puting period of limitation therefor	S 14 N 1
	D 12 11 1
— Suit for accounts—Whether anit is one for following trust property within S. 10	S 10 N 2
Snit for following trust property	5 10 11 2
(a) Suit against trustee for remnneration for services rendered	
hy plaintiff in connexion with the purposes of the trust—	
Whether within S. 10	S 10 N 2
(b) Suit by plaintiff as third person against trustee for recovery	
of moneys due to plaintiff out of trust funds-S. 10, if	
applies	S 10 N 2
(c) Suit for accounts against trastee, whether sait within S. 10:	S 10 N 2
(d) Suit for charging certain properties with certain alleged	S 10 N 25
specific trust—Whether within S. 10	D 10 IV 2
(e) Suit for removal of trustee and appointment of fresh trustees —S. 10, if applies	S 10 N 2
(f) Suit to recover from trustee trust property misappropriated	D 20 21 21
by him-Whether within S. 10	S 10 N 29
(g) T	
107	
	S 10 N 22
(h) Trust properties not romnved for purposes of the trust -	
Suit to establish plaintiff's right to nffice of trustee -S. 10,	0.10.17.00
if applies	S 10 N 22
-Suit for recovery of trust property from strangers who have	S 10 N 27
acquired possession by dispossessing trusten—Limitation	3 10 N 21
Trust property	
(a) Alienation of Invalidity of Suit for declaration — Limita-	A 120 N 4
(b) Alience of Suit against, for possession Limitation	A 124 N 2
/->	

	0001
Trust—Trust property—(Contd.)	
(c) Consisting of sum of money - Recovery of - Suit for, by	
trustee against legal representatives of co-trustee. Limita	y -
tion	A 120 N 4
(d) Mortgage of Suit to eject mortgagee on ground that mort.	
gage is invalid—Limitatinn	A 120 N 4
(e) Pledged with Bank-Recovery of - Suit for, by beneficiary	. A 120 N 4
-Limitation	
	A 48-A N 3
	1 101 11 0
•	A 134 N 3
•	A 134 N 12
(in) For declaration that sale by trastee is invalid - Suit,	W 194 IV 12
whether one for possession within Art. 134	A 134 N 1
(iv) For possession against anction purchaser in court sale	V 194 M 1
of trust property—Limitation	A 134 N 9
of trust property—Limitation	W TOT IN D
	A 134 N 5
• •	A 134 N 7
	11 101 11 1
Limitation	A 134 N 1
(viii) For possession of property nominally transferred-Suit,	
whether competent to attract operation of Art. 134:	A 134 N 8
(ix) For possession of property permanently leased by	
trustee - Limitation applicable, whether same appli-	
cable to suit for possession of trust property trans-	
ferred for valuable consideration	A 134 N 1
(x) Good faith of transferee, whether must be proved	A 134 N 10
(xi) Limitation—Starting point: A 134, A 134 N 1; A 134 N 1	2, A 134 N 16
(xii) Object of prescribing shart priod of limitation for such	
suit	A 184 N 2
(xiii) Right to suo barred under previous Acts, whether	
revived under amended Act	A 134 N 16
(xiv) Subsequent knowledge on part of transferee of trans-	
feror's right, whether will prevent time running in	4 104 37 10
favour of transferee (xv) "When transfer becomes known to plaintiff"—Burden	A 134 N 10
(xv) When transfer becomes known to plaintin - Durden	A 134 N 16
property is	V 191 V 10
property	A 124 N 2
	A 60 N 2
Trustee Assignee from, for consideration—Snit against	
	A 144 N 47
	d 144 N 47
	W 711 W 41
Constructive trustee (a) Benamidar, if constructive trustee	S 10 N 15
(b) Constructive trustee purporting to be in possession of pro-	D 10 1 10
perty on behalf of person for whose benefit he is constructive	
trustee—Suit for possession against constructive trustee —	
Limitation, when begins	S 10 N 28

Trustee—Constructive trustee—(Contd.)
(e) Debtor of testator becoming executor under his will-Whe-
ther a constructive trustee S 10 N 16
(d) Suit against, based on breach of constructive trust - Every
fresh breach gives new cause of action for suit S 10 N 28
Co.trustceSuit by
(a) To enforce claim for contribution against estate of deceased
trustee
(i) Limitation Starting point A 100; A 100 N 2
(ii) Right of contribution - Basis of -When arises A 100 N 1
(iii) Where one trustee is less guilty than another and has
to refund the loss-Limitation A 100 N 1
(b) To enforce claim for contribution against living trustee -
Limitation A 100 N 1
One trustee managing trust to the exclusion of others - Posses.
sion of such trustee, whether adverse to co-trustees excluded from
management of trust A 124 N 9
—Devolution of right to sue S 2 Cl 8 N 6
-Express trustee-Who is-Executor, whether express trustee A 123 N 8
-Female trustee-Estate of-Possession of - Suit for, by trustee in
succession-Limitation A 141 N 10
Husband appointed executor of wife's will by which she bequeaths
her right to dower to certain persons, whether trustee in respect
of such dower debt A 103 N 8
Joint trustees-One joint trustee, if can give discharge on behalf of
all joint trustees S7 N 25
— Lambardar is not a trustee for co-sharers A 142 & 144 N 35
- Liable to account for an account and ascertainment of dues - Equit.
able claim against—Limitation A 62 N 9 Meaning of S 2 Cl 11
(b) Mortgagee remaining in possession after mortgage has been satisfied, if trustee S 2 Cl 11; S 2 Cl 11 N 3
satisfied, if trustee S 2 Cl 11; S 2 Cl 11 N 3 (c) Wrongdoer in possession without title, if trustee: S 2 Cl 11; S 2 Cl 11 N 3
—Money of, spent for purposes of trust—Suit for—Limitation A 132 N 8
-Of temple
(a) Office of, falling vacant—Temple properties taken possession
of by strangers during interval until appointment of new
trustee Cause of action of new trustee to recover DIODEL.
tion Whan prices Syn /
(b) Transfer by—Whethor binding on succeeding trustees A 91 N 10
Office of Suit for possession of Limitation
(a) Where office is boreditary A 124 N 2
(b) Where office is non-hereditary A 124 N 2
Omission of trustee to collect moneys due to trust-Loss sustained
by trust—Suit against trustee to make good the loss—Limitation —Starting rount A 120 N 4
- more or there right to hearthon— throughout and a trade-
Person in possession as-Whether can prescribe to hereditary
Person in possession having no right to possession but in possession merely as manager or agent of another—Whether trustee S 10 N 5

Trustee _ (Contd.)

Trustee Conta./	
Religious endowment-Manager of, not a trustee in the strict sense	::
Α1	42 & 144 N 49
Succeeding trustcoWhether bound by order respecting trust pro-	
perty against preceding trustee	A 47 N 4a
Snit against	
(a) Based upon malfeasance—Limitation	A 36 N 8
(b) Based upon misfeasanco—Limitation	A 36 N 8
(c) Based upon nonfeasance—Limitation	A 36 N 8
(d) By succeeding trustee for sum taken for litigation expenses	
-Limitation	A 61 N 3
(e) For accounts of trust property and recovery of dues-Limi-	
tation	A 62 N 4
(f) Where trustee is liable in equity to account for a particular	
fund - Limitation - Starting point	
Suit by	, , , , , ,
(a) Against legal representatives of co-tinstee-For recovery of	
trust property consisting of sum of money-Limitation	A 120 N 4
(b) For monoys due to trustee—Limitation	
(c) For 1000very of certain sum of money from former trustee	
taken by him from trustee—Limitation	
-Transferee of -Auction purchaser in Court sale of trust property,	
whether transferee of trustee for valuable consideration	A 134 N 9
-Trustee de son tort	71 702 Tt 0
	S 10 N 17
(a) Meaning of (b) Suit against—By cestur que trust for profits—Limitation (c) Whether trustee for specific purpose	1 100 N 5
(a) Whathan trusted for energies manners	. S 10 V 17
Trustee for specific purpose Family arrangement Arrangement	(9 10 14 11
that a sum of money should be placed with a person to discharge	
dehts of one member and pay balance to him—Hundi given to	
that person and cashed—Such person, if trustee for specific pur-	
	S 10 N 13
	0 10 11 10
Under-tenures Avoidance of-Suit for - Who can sue under Bongal Revenue	
	A 121 N 5
Sales Act	7 121 N 0
In estates sold for arrears of revenue.—Avoidance of	
(a) In what way effected, where under Provincial Rent and	
Revenue Acts such under tenures are voidable at the op-	1 101 17 1
tion of purchaser	A 121 N 1
(b) Suit for	1 101 37 0
(i) Burden of proof of	A 121 N 6
(n) Burden of proof that under tenures were created sub-	
sequent to eroation of estate or tenure sold, on whom	1 101 17 0
lics	A 121 N 2
	1; 7 151 N 6
•	
of suit	A 121 N 2
(v) Suit, if necessary where under-enactments such sales	
render under-tonnres void	A 121 N 1
Whother incumbrance	A 121 N 3
U. P. Court of Wards Act	
S. 52-Period got after deducting time under-Whether period	
prescribed within S. 19, Limitation Act	S 19 N 12

U. P. Land Revenue Act			1	i			
-Section 111-Suit under-S. 4, Limital	ion Act app	lies	• • •	S	29	N	3
Yakil							
-Application by, for costs							
(a) Under Civil P. C.—Limitation	•••	•••			84		
(h) Under rules of High Court	•••	•••	•••		84		
Fees of_How recoverable	•••	•••	•••	A	84	N	5
Suit by							
(a) For costs			i	4			
(i) Against other party accord	ing to provis	sion of cons					_
decree—Limitation ···		•••	*	A 12	20 £ 84		
(ii) Against opposite party—Li		 А 84; Л	01 N	D. A	0.4	N	7
(1i) Limitation—Starting point (iv) Where there is express a		A 04; A	D4 11	2; A	04	41	•
costs are to be paid—Lim	greement us	to time w	nen	Λ	84	N	9
(b) For fees and costs—Against President	least of Toluk	Board_Li	mi-	**		-1	~
tation	ICHE OL MAINA	100114-11		A	84	N	2
Yaluable consideration	•••	•••	•••				_
-Annual rent, whether valuable consider	otion			' A I	134	N	1
—Gift in return of services rendered, whe		o consideral					_
within Art. 134	BLEE VALUEOR			A 1	134	N	7
Land exchanged for another, whether va	inabla consid	lecation wit				•	•
Art. 184	Muadio Consi.	TOTALION WIL	0411	A 1	34	N	7
Vatan	•••		•••				
-Alienation by vatandar without sancti	on of Govern	ment.—Ass	ess.				
mont levied on such alienated vatan p				A 1	10	N:	3
-Maharki vatan-Declaration of Suit			•••		20		
Mortgage ofMortgage of vatan prop	orty by vat	andar is v	alid				
during his lifetime but not binding on		•••	•••	A 1	48	Ν	9
Vendor and purchaser See Vendor and	endee.						
Yendor and Yendee							
-Breach of covenant for title-Whether	a continuing	wrong		S	23	N.	6
Covenant for quiet possession						•	
(a) Meaning of		•••		S	23	N'	7
(b) Possession given and covenanted	subsequent	ly disposses	sed				
-Breach of contract, if a cont		long as co	ve-	_			_
nanteo remains out of possession		•••	•••	8	23	N.	7
(c) Possession not given in the first		covenanteo	-:	a	23 1		7
Covenantee, if can suo upon tho	covenant						
Dovolution of right to sue	•••	···	s	2 0	101	N (
Ejectment suit by yender Wrong de be pleaded when suit for rectification			can	C	3 N	12	5
Failure of vendee to pay off mortgage d			don.		3 11	1,	•
losing property—Suit by vendor for	damages	Limitation	101				
Starting point	***	***		Α	83 1	N 1	7
Lien of vendor							
(a) Enforcement of Suit for Limit		•••	• • •	A 1	32 1	N 1	7
(b) Vendor leaving with vendee purch	nase money i	or payment	of				,
mortgage—Vendor, if has hen —Money left in hands of vendeo to pay of	 "	::	*** 1	A 1	32 I	N i	1
(a) Express contract of indemnity as			1170				
to pay—Suit upon such contract			uro	A	83 1	N 1	7
- 1-7		-			-		

	0000
Yendor and vendes—Money left in hands of vendee to pay off ver (Contd.)	idor's debt—
(b) Express registered contract of indemnity against loss caused by failure to pay—Suit upon such contract—Limitation:	A 83 N 7
 Money paid for sham sale deed, whether mnney paid on existing consideration in suit for money paid on existing consideration which afterwards fails 	
Right of vendor	A 97 N 3
(a) To recover unpaid purchase money personally from purchaser —Basis of	A 111 N 2
(b) To unpaid purchase money by enforcing statutory charge on property sold—Limitation	A 111 N 2
 ——Sale of immovable property (a) A sold half property to B but continued in possession under a 	
rent note executed by B—A holding over after expiry and selling whole property in C—Suit by B for joint possession	
against C—Limitation (b) Property in possession of third party at date of sale—Vondor subsequently obtains possession — Vendor's possession be.	& 144 N 52a
comes adverse against vendee from date when vendor gets	& 144 N 52a
(c) Vendee is entitled to possession when conveyance has been duly effected even though purchase money has not been	
paid A 142 (d) Vendor continuing in possession—Remedy of vendee: A 142	& 144 N 56a & 144 N 56a
	& 144 N 52a
Suit by rendee (a) For breach of covenant in sale deed to put vendee in possessionLumitation	A 116 N 16
(b) For compensation for breach of express or implied covenant of title in sale deed	A 110 A 10
(i) Limitation (ii) Where from inception of sale vendor has no title	A 116 N 15
to convey and vendee has never been put in possession —Limitation—Starting point	A 116 N 15
(iii) Where title is known in be imperfect and vendee is	A 116 N 15
Starting point	A 116 N 15
(e) For compensation under S. 65, Contract Act—Limitation:(d) For possession of immovable property — When vendor was	A 116 N 17
out of possession—"When rendor was nut of possession." meaning of (e) For possession of property sold by reversioner—During life.	A 136 N 3
time of widow (i) For possession or for refund all purchase money—Limi-	
tation (ii) Suit after widow's death—Msintainability	A 116 N 17 A 116 N 17
(f) For possession of property sold by reversioner of Hindn	A 136 N 6
	A 132 N 8

9000	
Yendor and vendee-Suit by vendee-(Contd.)	1 *
(h) For refund of purchase money in respect of deficiency in extent of land sold, by enforcing conditions of sale A 65	N 1
(i) To recover value of deficiency in property comprised in sale deed based upon covenant in registered sale deed.—Limita-	
tion A 116 M	(10
Suit by vendor	
(a) Against vendee—On ground of vendee's failure to pay vendor's debts as contracted and for which purchase money is left in vendee's bands	
(i) Suit for compensation for breach of contract - Limita- tion A 83 N 7; A 116 ?	I 15
(ii) Suit on implied contract of indemnity—Limitation—	,
Starting point A 83	N 7
(b) For damages against vendee who has undertaken to pay mortgagee of vendor but fails to pay the same with result that vendor is damnified—Limitation A 120 N	51
(c) For personal payment of unpaid purchase money	
(1) For amount agreed to be paid by joint owner of pro-	
perty as part of adjustment in alloting the shares in a	N O
partition—Limitation A 111 (ii) Limitation A 111; A 132	
(iii) Right to enforce personal remedy based on expressed	• •
stipulation in registered sale deed—Limitation—Illustrative cases : A 111	N 2
(iv) Sale of minor's property by guardian—Vendee agreeing	
to keep purchase money in trust till minor attains	
majority — Death of minor before attaining majority	
—Suit by reversioner against vendee for recovery of amount—Suit whether for unpaid purchase money or	
for return of money after trust in respect of it is	
exhausted A 111	N 2
(v) To enforce charge on property sold for unpaid purchase	NT 0
money—Limitation A 111	NZ
(vi) Unpaid purchase money — Whether includes purchase money retained by vendec for payment to vendor's	
mortgagee A 111	N 4
(d) For purchase money - Vendor previously refusing it before	
sub-registrar before whom it was tendered by vendee	
according to covenant in sale deed—Suit, whether one on breach of contract A 116	N 1
(e) For relund of money left with vendee for paying off mortgage	
—Limitation A 132 (f) To enforce vendor's lien for unpaid purchase money — Claim	N 7
lor personal decree in such snit—Limitation A 116 N	23
(g) To recover peishkush paid by vendor after execution of sale deed under which vendee is bound to pay the same—Limi-	
tation A 116 N	15
— Suit for dispossession of vender of occupancy rights when sale is made without landlord's written consent—Limitation A 120	N 2

		,,,
Yendor and vendee—(Contd.)		,
- Vendee at private sale - Suit by, for		
	possessing of immovable pro-	
perty		
	A 136 N	
	A 136 N	14
starting point	A 136 N	3 1
(m) Limitation Starting poi	int A 136, A 136 N 2, A 136 N	1 6
(iv) Suit by purchaser from G	Government—Limitation A 136 N	٠
(tt) care by Parchaser from G	A 136 N	
37 3 3 1 41		U
Vendeo bound to pay charge on prope	orty sold Failure of vendeo	
to pay — Vendor paying off charge		
bursement against vendee—Limita	ation A 61 N	7
- Vendee covenanting to pay vendor's de		
debts-Creditor attaching vendor's	rights-Creditor, whether can	
enforce covenant under sale deed	A 116 N	15
Vendeo in execution sale-Suit by		
property - Judgment-debtor being	or out of nossession at data of	
sale—Limitation	. A 1	37
Vendee of Government-Suit by-Fo	hu neccession against manner in	•
		**
adverse possession against Government		•
- Vendeo required to pay off vendor	rs incumbrances—ratture of	
		_
	A 61 N	8
 '	•	
to return to vendor surplus after pr	navment to mortgagee - Suit	
by vendor for such surplus-Limits	tation-Starting point A 116 N I	5
"Vendor out of possession"-Meaning	g of A 136 N	3
- Vendor receiving sale price from the	urd person but compelled to	-
rofund the same-Subsequent suit	he wander against wander for	
salo price-Limitation	A 120 N 5	1
- Whether includes vendor's transfere		,,
		•
monoy	, AIII N	o.
Wages		_
And salaryDistinguished	A 7 N	
- Claim for Set off, of such claim	A 102 N	
-Meaning of	A 7 N 2; A 102 N	4
(a) Emoluments attached to beredi	itary office, whether wages A 7 N	2
(b) payment to arehaka of temple, v		2
- Of artisan-Suit for		-
(a) "Artisan"—Meaning of	A7N	г.
(b) Limitation—Starting point	A 7, A 7 N 1; A 7 N 6	r
- Of household servant Suit for		•
	of A7N	
(a) "Household servant"—Meaning		9
(b) Limitation—Starting point	A 7, A 7 N 1, A 7 N 6	
- Of labourer - Suit for		
(a) "Labourer"—Meaning of	A 7 N	
(b) Limitation—Starting point	A 7; A 7 N 1; A 7 N 0	5
Seaman's wages Suit for		
(a) In Civil Court where claim exceed	eds Rs 500—Limitation A 101 N 3	}
(b) In Court of Small Causes where	e claim is less than Rs. 500	
-Limitation	A 101 N 3	3
(c) Limitation-Starting point	A 7 N 1; A 101; A 101 N 4	
(d) Remedies of serman in respect of		
(a) retitenes or so then in respect of		-

3058	GENERAL	INDEX			
Wages-Seaman's wages, sulf	for_(Cont	a }			r
(e) Right to seaman's was				•••	A 101 N 2
(f) "Seaman"—Meaning of				•••	A 101 N 1
-Servants' wages as debt-Su	it nnon—Lin	oitation—/			
by debtor within period				***	A7N2
—Suit for				•••	•• • • • • • •
(a) By archaka for emolu	ments of nffu	eLimita	tion		A 103 N 3
(b) By archaka of templ					
received by trusteo fr					
is entitled—Suit, wl					A7N2
(c) By bisardar i. e. water				s he	
watches -Limitatio	n				A 102 N 2
(d) By cook - Limitation	ı	•••		***	A 102 N 2
(e) By engineer—Limitat	ion				A 102 N 3
(f) By goldsmith to recov	er price of n	aking orna	ments — Li	mi-	
tation			•••	•••	A7N2
(g) By motor driver—Li		•••	•••	•••	A 102 N 2
(h) By one Government s	ervant agains	st another	for recover	v of	
sum of public mone				rse.	4 7 37 0
ment to plaintiff—S				,	A 7 N 2
(i) By person employed t	o belp dealer	in sale of			A 102 N 2
tion	÷;	•••	•••	•••	A 102 N 2
(1) By villago carpenter-			Timitetian	•••	A 102 N 2
(k) By weighman employ		at a scop-			A 102 N 2
(l) By wet nurse—Limi (m) For declaration of rec		 Limitati	***	•••	A 102 N 3
(n) General and special a	mreisions of	-Dimitation			A 102 N 2
(n) General and special p	no visions or	III III VALION	A	7 N 6	3: A 102 N 5
•	:		cable to sui	t to	
•				• • •	A 131 N 3
(q) Residuary provision	of-Limitation	on		Λ7	N 1; A 103
(r) Parties to suit	***	•••		•••	A7N2
(s) Promise t · · .	. , .		action		A 7 N 6
(t) Suit for		. 8	ervant of the	nird	A 102 N 2
person,				-1:	A 102 N 2
(u) Wages due by reason	of recurring	right—Lin		pn.	A 102 N 3
cability of Art. 102 (v) Wages of household	and Art. 13.		harmong Li	mi.	21 102 11 0
tation	servants, art	isans and n	soouters		A 102 N 2
Waiver	•••	•••	•••	•••	
-Burden of proof as to					A 75 N 16
-Of forfeiture	•••	•••	•••	•••	
(a) Liffect of	•••	•••		•••	A 143 N 12
(b) What constitutes		•••	•••	•••	A 143 N 12
Question ofWhether one	of fact		•••	•••	A 75 N 15
What constitutes, within A	rt. 75		•••	•••	A 75 N 11
What is					
(a) Demand of overdue	nstalment	, whother	waiver wit	nin	A 75 N 13
Art. 75 (b) Part payment of ins	talment c-			 	A 10 M 13
account, whether w			morally town	ras	A 75 N 13
	lrom pleadin	4446. 10			A 75 N 17
Wajlh-ul-arz	j.tcuaruj	,-	•••		
- Entries in-If can overrid	law of limit	ation		•••	S 3 N 24

Ward					

A STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STATE OF THE STA	
guardian	A 44 N 7
guardian—Whether binding on ward	A 44 N 6
-Indian Christian ward-Property nf-Transfer by de facto guar-	V 44 W 0
dian—Whether binding on ward	A 44 N 6
-Legal representative of - Smt by for setting aside transfer of	11 11 11 0
property by guardian—Limitation	A 44 N 7
-Muhammadan ward-Property of-Transfer by de facto guardian	
—Wbether binding on ward	A 44 N 6
Property of	
(a) Transfer by guardian	
(i) Instances of such transfer which are binding on ward	4 44 37 0
unless and until transfer is set asido	A 44 N 3
 (ii) Setting aside—Snit for—By assignee of ward (a) Where ward joins as co-plaintiff — Maintain. 	
1	A 44 N 7
(b) Whether maintainable	A 44 N 7
(iii) Transfer void and bence not binding on ward—What	VATA
IS	A 44 N 3
(iv) Ward continuing in possession notwithstanding trans-	
fer - Transferee sning ward for possession - Ward,	
whether can resist suit on ground of transfer being	
liable to be set aside at his instance even if such suit	
by bim may be time barred at that date	A 44 N 2
(b) Transfer by person other than guardian—Setting aside—Suit	
for—Limitation	A 44 N 5
- Remedies of In respect of transfer of property by guardian ab	A 44 N 2
mitro void	A 44 N 2
—Suit by	
(a) Against guardian (i) For account of profits made by guardian during plain-	
	A 120 N 15
tiff's minority—Limitation (ii) For specific sums received by guardian—Limitation	A 62 N 25
(b) For possession of property alienated by do facto Hindu guar-	
dian-Limitation	A 44 N 6
(c) For possession of property alienated by guardian-Where	
alience is in possession of property by virtue of transfer	
(i) Limitation	A 44 N 2
(n) Suit for possession not brought within limitation pres-	
cribed by Art. 44—Ward's right to property itself, whether extinguished under S. 28	A 44 N 2
(d) For redemption of property—On ground that alleged sale by	V 44 W 2
guardian is only a mortgage—Limitation	A 44 N 2
(e) To set aside decree based on compromise entered into by	
guardian	
(i) Limitation	A 44 N 4
(ii) Where decree involves transfer of property-Limi-	
tation	A 44 N 4
(f) To set aside transaction by guardian which is not a transfer	
of property—Limitation (g) To set aside transfer of property by guardian	A 44 N 4
(i) Burden of proof as to sait being in time	A 44 N 8
(1) THE COLUMN TO STATE OF THE STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF STATE OF	0

3060	GENER.	AL INDEX		
	by—To set aside transfer (ii) In respect of transfer ab			
	binding on plaintiff—Li	mitation · ·		A 44 N 2
,	 ii) In respect of transfer b aside—Limitation iv) Suit by minor member of 	•••		A 44 N 2
	ting aside transfer by m (v) Suit by minor member of	anager—Lim	itation	A 44 N 5
	aside alienation by Kar Limitation	mavan of tar	wad property-	A 44 N 5
	vi) Suit on ward's attaining s			
•	tation iii) Where transfer is by de	'	·	A 44 N 4
•	tation	·		A 44 N 6
	ix) Where transfer is made a but as that of gnardian			
Waste	nded waste—Restraining of-	Suit for Li	mitation	A 41 N 1
	sation for—Suit for—Limital		11110401011	A 41 N 1
-Meaning	ot			A 41 N 2
Permissi	ve waste-Restraining of-S	uit for-Lim	itation	A 41 N 2
Restrair	ing of Suit for	-		
(a) Co	namon instance of such suit	•••		A 41 N 1
/L\ T:	11 61 1 11		' ' A 41	N 1; A 41 N 8

			whe-	
				A 41 N 1
	aste, whether must have bee			
c	f Art. 41		'	A 41 N 1
Waste land	s			
	ssertion of hostile title to l	and by third	nerson is not	
	nt to disturb true owner	***	A 14	2 & 144 N 11
- Drogum	ntion of to Dobnitial of Ant		Δ 14	2 & 144 N 96
Presum	ption in Canara is that it belo	ngs to Govern	ment: A 14	2 & 144 N 96
Presum	ption is possession follows titl	e	A 14	2 & 144 N 15
	,	• , ••• •		
	ls (Claims) Act			
	uit under—To contest award			A 1; A 1 N 1
tation				ALAINI
Watercours	se			
Diversion	on of-Compensation for-Su	it for		
(a) L	imitation—Starting point		A	38; A 38 N 3
(b) P	eriod in respect of which com	pensation can	he recovered	A 38 N 3
(c) W	here diversion is a continuing	wrong-Limi	tation-Starting	
	point	***	***	A 38 N 3
Obstruc	tion to			
/-) A				
	••	***		37; A 37 N 3
	·	ntinuing one	–Limitation–	4 27 N 2
/1 \ T	Starting point			A 37 N 3 V 2; A 38 N 2
	njunction to restrainSuit for		A 37 I	A 38 N 2
	emoval of Suit for Limital		•••	

Watercourse-(Contd)				
Obstruction to watercourse and in fir	w nf wa	ter — Wh	ether a	
				S 23 N 12
Rights as to-Declaration of-Suit for	-Limitat	ion	A 37 N	2. A 38 N 2
Way				•
Obstruction to-Compensation for-Su	it for			
(a) Limitation—Starting point			Α.	37, A 37 N 3
(b) Where obstruction is a continuin				o., o o
ing point				A 37 N 3
Widow				
-Of invalidly adopted son-Whether me	mber of f.	mily :	A 19	8 & 129 N 4
Will				
-Acknowledgment contained in will-V	Vhether s	ufficient f	or pu.	
poses of S. 19				S 19 N 46
Avoidance of-Suit for-On ground tha	t it is vni	dable tran		10
—Limitation				A 120 N 20
Concocted willWhether document iss	ued withi	n Art 92		A 92 N 3
	C. I.	A	120 N 21	l; A 141 N 3
		n n	ot cited	
			• • • •	A 164 N 2
- Suit in respect of For declaration the	t alleged	will is io	rgery—	
	•••	•••	•••	A 120 N 20
	•••	•••	•••	A 91 N 16
Words and phrases				
	•••	• •	•••	A 64 N 2
'Act' includes illegal omissions	•••	•••	•••	S 24 N 4
	•••	•••	•••	A 10 N 7
Alienation Meaning of		• •	•••	A 118 N 3 A 125 N 13
"Alleged to be"-Meaning of, under Ar				A 2 N 5
	•• •	•••	•••	A 69 N 1
		•••		A 80 N 2
<u> </u>		•••		A 21 N 1
Civil proceeding in S. 14-Meaning of	•••	•••	•••	S 14 N 13
Common carrier-Meaning of	•••	•••	•••	A 30 N 2
Conditional bond-Meaning of	•••	• • •	•••	A 68 N 1
Copyright-Meaning of	•••	•••	•••	A 40 N 2
	•••	•••	•••	A 3 N 3 S 14 N 13
	•••			S 20
• ••		•••	· · ·	A 24 N 1
Defendant-Definition of				A 124 N 7
'Disability or inability to sae' in S 9-	Meaning 1			S9N4
- Distraint Meaning of		• • •		A 28 N 1
Distress-Meaning of		•••	•••	A 28 N 1
- "Doing" includes "doing in improper m	anner"	•••		A 2 N 4
Domestic servant-Meaning of		•••	•••	A 7 N 3
- "Enactment in force" - Meaning of, in	Art. 2	•••		A 2 N 7 A 121 N 4
—Entire estate—Meaning of —"Execute" in Expl. 2, Art. 182 include	los nomes	to entert	ain an	V 131 W 4
plication	ies power	on onter:	ти пр-	A 182 N 87
False imprisonment—Meaning of			•••	A 19 N 1
"Final decree or order" in Art. 182-M	eaning of	•••		A 182 N 40

Words and phrases-(Contd.)

Words and phrases-(Contd.)				4
"Final order"-Final, meaning of			A	182 N 129
- Give discharge Meaning of	•••	***	•••	S7N9
Good faith-Meaning of			***	S 14 N 20
"Growing in, or attached to or subsis-	sting on the	a land of a	nother".	
in S. 2, cl. 5—Meaning of			S	2 CI 5 N 12
Guardian-Who is, within Art. 44	•••	•••	•••	A 44 N 5
Hindu or Mahomedan ' Meaning o	of in Aut 1		***	A 141 N 4
Hiring-Meaning of .	M, 10 11100 3	***	•••	A 50 N 1
'Hotel'-Meaning of	••	•••	•••	A 8 N 1
Household servant-Meaning of	•••	•••		A 7 N 3
Illegal distress-Meaning of	•••	***	•••	A 28 N 1
Immovable property Meaning of	•••	•••		; A 15 N 1
Technical Manning of	•••	•••		S2N1
Includes-Meaning of	•••	•••	•••	S6N6
Incorporated hody-Meaning of	•••	•••		A 43 N 1
Injunction-Meaning of	•••	•••	•••	A 22 N 2
Injury-Meaning of, within Art. 22	•••	•••	•••	S 24 N 3
Injury in S. 21 includes legal injury	***	•••	C 00 N 7	
Interest-Meaning of	•••	•••	5 20 N Y	; A 63 N 2
Labourer Meaning of, in Art. 7	•••	•••	•••	A7N4
Land-De6nition of	•••	•••		A 125 N 12
 ` ` ' ' ` '	•••	***		C1 5 N 12
— tion	in accordan	rel diim esc	7'' ··· <i>i</i>	A 182 N 52
II	leaning of	•••	•••	S 10 N 20
_ ·	•••	•••	•••	A 24 N 1
Local law-Meaning of	•••	•••	•••	S 29 N 6
Lodger -Meaning of	•••	•••	***	A 9 N 1
Lodging house '-Meaning of	•••	•••	•••	A 8 N 1
Means and includesMeaning of	•••	•••	•••	S 2 N 1
MonthMeaning of	•••	•••	•••	S 25 N 1
- Mortgages in Art. 148 - Term	incindes a	any person	having	
acquired rights of mortgages	•••		•••	A 148 N 2
Moveable property-Meaning of	•••	•••	•••	A 29 N 5
Officer of Government-Who is, with	in Art. 14	•••	•••	A 14 N 5
"On demand "-Meaning of, in Art.		•••	•••	A 59 N 6
-Order in Art. 12, Cl. (b)-Meaning of		•••	•••	A 12 N 7
"Order," in Limitation Act must be	taken to h	we same me	eaning	
as in Civil P. C., unless sufficient rea			A	182 N 129
'Order'-Meaning of, in Art. 162	•••	•••		N 21, 129
Partnership-Meaning of	•••	•••		A 106 N 3
PayableMeaning of, in Art. 57		•••	•••	A 57 N 5
"Penal actions "-Meaning of, under	English la	w	•••	A 6 N 1
Period of limitation prescribed fo	r any snit	etc., " in S	5. 4	
Meaning of	-44	***		NSFN1
"Period of limitation prescribed the	refor by S	ch. 1, " in S	3. 3	
Meaning of	•••	•••	•••	S3N8
-Period prescribed-Meaning of	•••	•••	***	S 14 N 9
"Period prescribed" in S. 19-Mean	ing of	•••		S 19 N 12
Person-Meaning of	•••	•••		N 6, 7, 8
_ m	•••	•••		A 131 N 9
				£ 144 N B
	Art. 3—Me	aning of	•••	ASNS
- ' ' ' '	•••	•••	•••	S 4 N 11
 ", • •	•••	•••	•••	S 15 N 3

Words and phrases-'Contd 1			
-Private person-Meaning of, within Art. 149			A 110 M 11
	•••	•••	A 149 N 11
Proper Court - Meaning of	•••	••• 4	1 182 Expl 2
	•••	***	A 23 N 4
	•-•		S G N 12
·· · · ·	•••		A 122 N 5
unde	er Registrat		A 182 N 24
Remainderman-Definition of	•••	•••	A 140 N 3
-Representative-Who is, within Art. 21			A 21 N 1
	•••		A 10 N 2
-Right of pre-emption-Meaning of	•••	•••	
- Hight to sue Meaning of	***	•••	S 2 CI 8 N 2
- Right to use property -Meaning of	•••	•••	A 32 N 2
Seaman-Meaning of	***	•••	A 101 N 1
-Servant-Meaning of	•••	•••	A7N3
-Service-Meaning nf, within Art. 26		•••	A 26 N 1
"Setting aside a sale"-Meaning of	•••		A 12 N 2
—Sign—Meaning of		•••	S 19 N 31
C	•••		S 19
	•••	•••	
Single bond-Meaning of			A 66 N 2
Specific injury in S 24Meaning of	•••	•••	S 24 N 3
Special law-Meaning of	• • •	. •••	S 29 N 6
"Subject to the provisions of Ss. 4 to 25" in S.	3-Meanin	g of	S3 N3
-Suit-Meaning of-Whether includes appeal	•••	***	S 14 N 5
"Suit or application" in S 18-Meaning of-Co	mplaint of		
offence, if included	***	•1•	S 18 N 3
Tavern'-Meaning of	***	***	A 8 N 1
			S 3 N 39
	•••	•••	A 121 N 3
-Tennre-Meaning of	***	•••	
Tenure-holder-Meaning of	•••	•••	A 121 N 3
—Thavanat—Meaning of	***	•••	A 53 N 1
The Court, if means proper Conrt	•••	•	S 4 N 13
Time requisite' in S. 12-Meaning of	**1	•••	S 12 N 10
-To induce a breach of contract -Meaning of	•••	***	A 27 N 1
Trespass-Meaning of	***	•••	A 39 N 2
-Trust for specific purpose-Meaning of		•••	S 10 N 7
	•••		S 10 N 6
- 'Under legal process'-Meaning of	•••	•••	A 29 N 4
- Trust in S. 10—Meaning of - 'Under legal process'—Meaning of - 'Under the same Code' in Art. 166—Meaning of		•••	A 166 N 3
'Vested' in S. 10-Meaning of		•••	S 10 N 5
	•••		
	•••	•	A7N2
- Waiver - What constitutes within Art. 75	•••	***	A 75 N 11
"Without prejudice"—Meaning of	•••	•••	S 19 N 66
	•••		A 19 N 1
Wrongful seizureMeaning nf, within Art. 29	•••	A 29 N	2; A 29 N 3
——Year—Meaning of ··· ···	•••	•	S 25 N 1
Work			
-Price of work done-Suit for			
(a) Essontial condition for applicability of Art	56	•••	A 56 N 1
(h) Illustrative cases governed by Art. 56		•••	A 56 N 1
	•••		3; A 56 N 4
(c) Limitation—Starting point	ettandene	n who.	, 11 DO IN 4
(d) Suit for recovery of fees due for medical			A EC M -
ther suit for price of work done		***	A 56 N 1
(e) Where no time has been fixed for payment		•••	A 56 N 3
(i) Where suit consists of several claims	•••	•••	A 56 N •

3061	GENERAL INDEX		
Work-	Price of work done, suit for-(Contd.)		
(g	Where work done is expressly stated to be payable	at the	
	end of each agricultural year		A 56 N 3
(h	Work done at the request of defendant as agent, w		4 ×0 × 0
/:	work done at the request of defendant within Art. 56 Work, whether must have been done at defendant's a		A 56 N 2
(1	for applicability of Art. 56	requosi	A 56 N 2
Wankme	n's Compensation Act	•••	1 00 1 2
	oedings under		
	Applicability of provisions of Limitation Act		A 22 N 1
	Whother suit within Art. 22		A 22 N 1
Worship	•	•	
	t of-Suit for exclusive right of worship-Limitation		A 120 N 48
	ormance of — Right to—Whether can be acquired by pr	escrip.	
tio		•••	A 124 N 15
Wrong			
	mitted during lifetime of deceased person—Suit for		4 00 M 1
	Provision for	•••	A 20 N 1 A 20
	inuing wrong	•••	A 20
	False imprisonment, whether continuing wrong		A 19 N 9
	Wrongful soizure, whother continuing wrong		A 29 N 8
	l detention		
Of n	roperty-Possession of bailee after expiry of period for	which	
goo	ds were bailed to him, when becomes wrongful detention		A 49 N 8
Wrongfu	l restraint		
	false imprisonment, distinction between	•••	A 19 N 1
Moa		•••	A 19 N 1
	ıl seizure		
Con	pensation for —Suit for		
Ω)	On ground of injury cansed by injunction wrongfully obtained whether one for wrongful seizure within Art. 29	ainea,	A 29 N 7
11	On ground of irregular conduct of sale resulting in dai	mollee	H 20 11 .
10	whether one for wrongful seizure within Art. 29		A 29 N 7
(6) Suit for damages on ground of fraud, whether one for v	vrong-	_
	ful seizure within Art. 29		A 29 N 7
(d) Suit for recovery of amount wrongfully taken by defe		
	from Government treasury under legal process, whoth	er one	A 29 N 6
	for compensation for wrongful seizure within Art. 29) Suit for specific property seized, whether one for com-	***	21 25 11 0
(1	tion for wrongful seizure	bensa-	A 29 N 5
Of 1	noveable property—see under Moveable property.		
01 1	noveable property under legal process — Compensation	for:	
Se	under Moveable property.		
	er legal process - What is - Distraint effected by lar	ndlord	

A 29 N 4 A 120 N 39

under provisions of Agra Tenancy Act, whether wrongful seizure under legal process

Zar-ir-chnharum-Recovery of-Suit for-Limitation ...

to Official Reports . ? AND PUBLISHED BY D. G. RANADE AT THE ALL INDIA REPORTED PRESS. riably given in all and in the Onicial NAGPUR, FOR TRE ALL INDIA BEFORTED LIMITED.

A. I. R. 1933 Peshawar 61 at 82.

"The law on the subject is Incidly summed up in Chitaley'a Commentery on Civil Procedure Code, Vol. 1, p. 182, and is etated as follows: 'A party . . . them.'"

A. I. R. 1935 Aliahabad 253 at 255.

"... the reason being that no one can have vested right in forms of procedure. The subject is discussed in Chitaley's Civil Procedure Code, Vol. 1, pp. 4 and 5."

A. I. R. 1934 Peehawar 40 at 42.

"The argument is based on Chitaley's Commentary, 1933 Edition, p. 1883 nuder O 21, R. 15 of the Code, which is enprorted by Gopendra Krishna v. Moti Lai, A. I. R. 1939 Cal. 559."

A. I. R. 1934 Peshawar 67 at 61.

"These conflicting views are noted on pp. 746 and 747 of Chitaley's Civil Procedure Code."

A. I. R. 1934 Peebawar 94 at 95.

"He (D. J.) quotes from Chitaley as follows: 'All co-promisees ... as parties.'

"I have no disagreement with this statement of the lew, but in the present case the defendant is not a promisee, but e promisor. A further passage from Chitaley is cited by the leerned Additional District Judge to the followins effect:

'Where severel . . . of suits.'

"That statement of law applies to the facts of the present case."

A. I. R. 1936 Allababad 811 at 813.

"The ruling cases on this point are collected and noted in Chitaley's Civil Procedure Code, Vol. 3, p. 2318, 2nd Edn."

A. I. R. 1936 Nagpur 228 at 230 == I. L. R. 1937 Nag. 230 at 234,

"The point is well summed up at pages 2469 and 2470 of Chitaley and Rao's Code of Criminal Procedure, Vol. 3, and the learned anthors rightly point out that the view of the High Courts, excepting Rengoon, is consistent with the principles underlying sub-section 3 of the section."

A. L R, 1936 Peshawar 37 at 37.

"Connsel for the appellants quotes for the description of the effect but where the question of costs has been referred to the arbitrator, or where the who matter in dispute has been referred to the arbitrator, the arbitrator has enthority award costs in the award."

A. I. R. 1936 Peshawar 209 at 210.

"We have been referred to Note (nuder S. 48 in Chitaley's Commentary of the Civil Procedure Code where the distintion between e fresh application and application in continuation of a previoapplication is illustrated."

A. I. R. 1937 Aliahabad 82 at 87.

"The balance of enthority seems to thet an Appellate Gourt has no power und it to interfere to the prejudice of e pers who was a party to e suit, but who was unpleaded in the appeal: vide "Code Givil Procedure," Chitaley & Auneil Re Vol. 3, pp. 3003-3004 (1st Edn.). I at therefore, of opinion that defendants 2 cutch to to have been impleaded."

A. I. R. 1937 Calcutta 222 at 224.

**On this point there is e consideral mass of case law which will be found set o in Chitaley's Commentary on the Ci Procedure Code."

A. I. R. 1937 Lahure 41 at 49 = I. L. R. 1937 Lah. 11 at 33.

"I find it stated in Chitaley and Ann Rao's Code of Civil Procedure that it section (i. e., E. 80) like S. 79 enacts only rule of procedure. With this view I agree

A. I. R. 1937 Nagpur 60 at 53 = 1. L. R. 1937 Nag, 277 at 264.

Note

non and

the Uniminal Procedure Code. The fearm authors favour the view of the Madras Calentta High Courts which is in with the expressed above."

I. R. 1937 Nagpur 216 at 217 = . L. R. 1938 Nag. 280 at 282.

Chitaley and Ran'e-Civil Procedure Edn. 2, p. 2094 under O. 22, R. 1, it arked:

agroe with these remarks which apply to a dismissal of the suit in 1. It is further remarked on the rity of 34 Mad loc. cit. that the apanot be continued even in respect aft or other rolled which are merely that to the main reliefs. I accordingly I the contention of the respondent."

I. R. 1937 Nagpur 268 at 269 = L. R. 1937 Nag, 819 at 520.

appears that the weight of anthority arour of the view that the Appellate has such powers. The dissentients that view are limited to the High In Allahahed and Rangoon and the Court in Oudh: See also Chitaley ac's Onde of Civil Procedure, Vol. I, 12."

I. R. 1937 Oudh 481 at 483 = L. R. 13 Luck, 860 at 568 & 668.

essra. Chitaley and Annaji Ran in Zommentary on the Onde express the n that the present ci. (d) of R. 6 33 gives effect to the view taken in ull Bench decision of the Allahahad Court reported in 7 All 661, and other

. I. R. 1937 Peshawar 13 at 15.

this connexing we may quote the ring Note No. 4 from Mr. Chitsley's centary under R. 53 which is as 3: 'Other decrees. — A decree this rule.'"

. I. R. 1937 Peshawar 41 nt 41.

n p. 1480 of Mr. Chitaley's Compry on the Civil Procedure Codn 1) it is noted that 'where a plaint's neted on the re opening date after helidays and the period of limitation spired during the helidays, the fact the ground of exemption under § 4.

Limitation Act, was not specifically mentinned in the plaint will not untail the dismissal of the cuit inasmuch as the Canri is bound in take indiciel notice of the hulidays. This note is supported by reference in rulings in Nagpur, Lahne, Madras and Calentta Counts, though a Calentta ruling to contrary is also noted. The proposition as etated appears in me in be correct."

A. I. R. 1937 Peshawar 81 at 81.

"Learned connsel has been mable to show me any decided case in which action it that nature amounts the a public missance, and the commentary in Chitaloy's Civil Procedure Code certainly indicates the contrary."

A. I. R. 1937 Rangoon 391 at 392,

"The fearned authors of the Code of Criminal Procedure by Chitaley and Annajirao. Edn. 1, Vol. 1, at p. 200 say: 'Thus an ... Provisn.'

"I agree with this view."

A. I. R. 1938 Calcutta 287 at 289 & 290= I. L. R. (1938) 1 Cal. 53 at 88 and 60.

"In the Note to Messrs, Chitaloy and Annaji Rao's Cods of Civil Procedure, at p. 1385, I find the following comment: The first ... parties."

"The fearned anthors of Chitaley and Annaji Ban's Code of Civil Procedure in the paragraph to which I have already referred, appear to me to sum up in a few words the substance of the decisions."

A. I. R. 1938 Calentta 730 at 733 == I. L. R. (1939) 1 Cal. 112 at 120.

"The expression in the cause of a like nature" has been the enhicet of various decisions, most of which will be found mentioned in Chitaloy's Limitation Act (1933), pp. 567 to 572."

A. I. R. 1938 Lahorn 220 at 222.

"{The amended Rule will be found printed at pp. 252.3 of Chitaley's Code of Civil Procedure, Edn 2)"

A. I. R. 1938 Lahore 345 at 346.

"The learned counsel for the present resonance also guoted A. I. R. 1933 All. 446, A. I. R. 1933 All. 264 (a judgment by a Full Bench, one member of which was the present Hon'ble Chief Justice of the Lahore High Cont) and the remarks in the Commentary of Mr. Chitaley's Criminal Procedure Code, Vol. J. p. 675."

A. I. R. 1938 Negpar 122 at 123.

"It was assumed by the Taxing Jodge (Bose J.) in his order of reference that the present case was similar because he assumed that there was no difference for these purposes between a plaint and a memorandum of appoal. This we think is wrong although there are a larger number of rulings collected at p 44 mf Vol. 1 mf Chitaley's Civil Procedure Code which take that view."

A. I. R. 1938 Oudh 45 at 47 and 48 = I. L. R. 13 Luck, 689 at 693 and 695.

"The learned coonsel (for appellant) maiotained that that case stands aloos, and he spointed out to us that in the Commontary on the Civil Procedure Code by Chitaley and Annaji Rac this case is submitted to have been wrongly decided: vide the Cummentary, Vol. 1, (Ede. 2) p. 478, (Note 9, F. N. 4).

"In my upinion, the contention of the learned counsel for the appollant must be accepted."

A. I. R. 1938 Ondh 146 at 147 = I. L. R. 14 Luck, 116 at 118.

"As has been pointed ont in Chitaloy's discussion of this matter in his Notes to S. 116 at pages 924 and 925 mf Vol. 1, Edn. 2 of the Civil P. C., the Allahahad view originally depended on a distinction between cases in which the application had heen rejected and cases where it had been accepted."

A. I. R. 1938 Peshawar 4 at 6.

"The general result of this conflict has been clearly set out in Note No. 9 uf the commontary on that Rule in Chitaley's Codo of Civil Proceduro and virtually all the cases which have been referred to in the course of that Note have been cited before us as well as some other rulings in addition."

A. I. R. 1939 Lehure 356 at 357.

"As pointed out in A I R 1921 Lah 369 and A I R 1928 All 236 the absence of a shifting balance is net decisive: see also cases collected in Chitaley's Limitation Act, Vol. 2, p. 1362 et seq."

A. I. R. 1939 Ondh 86 at 89.

"According to Chitaley, (Civil Procedoro Code) Vul. 1, p. 517, Note 7:

'A debt debt.'"

gested by learond coonsel."

A. L. R. 1939 Ondh 116 at 117 = I. L. R. 14 Luck. 538 at 541.

"A reference to the Notes to O. 40, R. 1

latest edition uf Katju and Das's Code of Civil Procedure makes it golto clear that there is no such priociple as the oog suc-

A. I. R. 1939 Oudh 284 at 285 = I. L. R. 15 Luck, 19 at 23.

A. I. R. 1940 Allahabad 263 at 266. .

"Io Chitaley's Criminal Procedure Code, Vol. 1, p 797, the learned commentators say: 'It is Evidence Act.' I agree with their conclusion."

A. I. R. 1940 Peshawar 24 at 25.

"At Note 10 to O. 21, R. 15 of Chitaloy'e Givil Procedure Code the following comments are made as regards the right of appeal against ac order made under O. 21, R. 15:

-